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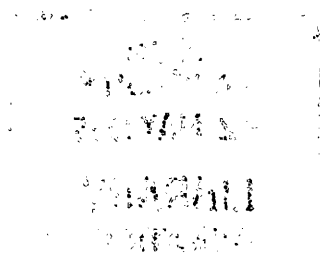
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**Professor Gerald Vinten BA MA MSc Dip Ed DPA IPFA
FRSA FRSH FRGS F Inst D FIIA Hon LLD.**

**WHISTLEBLOWING INTERNAL AUDITORS - A
CONTRADICTION IN TERMS?**



**Offered for the degree of Bachelor of Philosophy
in the disciplines of management and accountancy.**

THE OPEN UNIVERSITY

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WHISTLEBLOWING INTERNAL AUDITORS - A CONTRADICTION IN TERMS?

Professor Gerald Vinten.

ABSTRACT

The topic of whistleblowing is achieving unprecedented prominence in official reports, publications, research, legislation and the media. Some influential voices are suggesting that far from whistleblowing - informing on organizations that commit illegal or unethical acts - being subversive and undesirable, it may in certain circumstances deserve high praise. Inevitably it entails huge risks, and these risks need to be personally and carefully considered.

The first part of this thesis examines the case of external audit, a close cousin of internal audit. There should be fewer opportunities for the external auditor to blow the whistle, although such instances are likely to be highly material. There has been much international debate on the role and purpose of external audit, and this has tended to exclude whistleblowing. However there are winds of change, and tightening of legislation and recent ethical guidance suggests that there are occasions when whistleblowing is either required or seriously to be contemplated.

Attention then turns to the central theme of internal audit. For practitioners the issue is far from clear-cut, and the Code of Ethics of the Institute of Internal Auditors and its other guidance is found to be ambiguous and even prejudicial to the interests of the individual member. Case studies of internal audit whistleblowing highlight the issues. Participant observation and social audit are explored, since both result in the possession insights that are the substance from which whistleblowing revelations are derived.

Generalized examples of whistleblowing are then presented to shed light on the wider context. Disaster situations by their life-threatening nature receive more widespread assent as to their societal value. The extent of legal protection for whistleblowers follows. Finally come criteria for valid forms of whistleblowing, the formulation of codes of ethics for whistleblowers, and suggest the way forward for the internal audit profession.

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SCOPE OF THESIS.

The topic of whistleblowing is achieving unprecedented prominence in official reports, publications, research, legislation and in the media. Some influential voices are suggesting that far from whistleblowing - informing on organizations that commit illegal or unethical acts - being a subversive and undesirable act, it may in certain circumstances be an activity deserving high praise. Inevitably it entails huge risks, and these risks need to be personally and carefully considered. Some whistleblowers may be described as activists, but others fall less willingly into the role, with the force of circumstances being the precipitating factor. John Banham, Director General of the Confederation of British Industry, wrote in support of the Social Audit report on the subject (Winfield 1990), and a government- established committee has suggested the possibility of honouring whistleblowers in the British Honours system for their good corporate citizenship.

The first part of this treatise examines the case of external audit, which is a close cousin of internal audit, albeit with a much more restricted scope than internal audit which is not just concerned with the year-end financial accounts. This means that there should be fewer opportunities for the external auditor to blow the whistle, although such instances are likely to be highly material. There has been much international debate on the role and purpose of external audit, and this has tended to exclude whistleblowing. However there are winds of change, and tightening of legislation and recent ethical guidance suggests that there are occasions when whistleblowing is either required or seriously to be contemplated.

Attention then turns to the central theme of internal audit, which seems far more resistant on this point in terms of the professional guidance issued. For the troops on the ground the issue is far from clear-cut, and the Code of Ethics of the Institute of Internal Auditors and its other guidance is found to be ambiguous and even prejudicial to the interests of the individual member. Some case studies of internal audit whistleblowing highlight the issues raised. The topics of participant observation and social audit are explored, since both result in the possession of knowledge and insights that are the substance from which whistleblowing revelations are derived. It is often by being a participant observer that one gains the insights into the reality of situations that then becomes the impetus to whistleblowing. Social audit, as its name implies, takes the auditor into areas in which the wider social impact of the organization is explored, and in which matters of serious concern are more likely to surface. It involves greater risk - and maybe opportunity - to both auditor and organization. . -

Generalized examples of whistleblowing are then presented in order to shed light on the wider context, followed by a consideration of disaster situations which by their life-threatening nature may receive more widespread assent as to their societal value . The extent of legal protection for whistleblowers is then treated. Finally we provide criteria for valid forms of whistleblowing, the formulation of codes of ethics for whistleblowers, and suggest the way forward for the internal audit profession.

CHAPTER 1. INTRODUCTION

"If everybody minded their own business", said the Duchess in a hoarse growl, the world would go round a deal further than it does".

Alice's Adventures in Wonderland

Whistleblowing is a new name for an ancient practice. It may be dated in history from the development of the concept of individualism. In the Middle East this was largely lacking until the eighth century before Christ, and the Hebrew prophets around this time, such as Hosea and Amos (Anderson 1967). They did not hesitate to criticise rulers and their social injustices, and risked their lives in so doing:

" Forasmuch therefore as your treading is upon the poor, and you take from them wheat: You have built houses of hewn stone, but you shall not dwell in them; you have planted pleasant vineyards, but you shall not drink wine of them. For I Know of your many transgressions and your mighty sins: they afflict the just, they take a bribe, and they turn aside the poor in the gate from their rights." (Amos 5: 11-12).

The lamentations of the prophet Jeremiah are another example, with the prophet daring to castigate God for having set him up to have to bear so many torments and tribulations (Birmingham 1956, Skinner 1963) . He has his own sense of dignity and worth that is not immersed into the collectivity of the organic state (Wayper 1973) or of the deity. Prior to this period we find that:

" The basic phenomenon peculiar to man is the consciousness of responsibility. In primitive man this is directly expressed as collective responsibility, in which the consciousness of the I remains uncertain and weakly developed. Only when responsibility breaks through the collective constraint and releases the individual from

his circle, making him rely on himself as a responsible individual, is it possible for full personal consciousness to awaken." (Eichrodt 1966).

The awakening has happened at different times in different places. Even in relatively unawakened countries, such as the People's Republic of China, there are pockets of whistleblowers, called counter-revolutionaries by the authorities, which is the Chinese name for treason. In the West, the history of non-conformity witnesses the blossoming of individualism, and the consequent increased possibility of whistleblowing. Whistleblowing that leads to the possibility of revolution led to fears that the social gospel of Methodism, even though by contemporary standards not that strong, might prompt an offshoot of the French Revolution in Britain (Harrison 1961, 172-173).

There is also a long-established literary genre that often entails an element of whistleblowing. This may be discerned in the Confessions of St. Augustine of around 400 A.D. Although it is mainly confessions of personal short-comings, it does not hesitate to reveal and castigate the pretensions of Faustus, the Manichean doctor, and the fraud which the scholars at Rome use against their masters - transferring from one to the other just before the fee is due. (Hudleston 1957, 114-123, 131-132). Pascal, writing in the 17th century, and in the line of the so-called Christian apologists, wishes to take the lid off religions seen as inimical to Christianity, especially Islam (Pascal 1966). Kierkegaard, in the next century, launches into a personal attack on Victor Hugo, based on information privileged to the circle in which he moved (Dru 1958, 180-181), and these were early examples of what eventually became investigative journalism, and which relies heavily on whistleblowers. So-called exposure texts on freemasonry are an example (Knight 1985).

It is particularly germane to examine whistleblowing in external and internal audit, since

the professionals who inhabit these areas are regularly privy to secrets of the highest magnitude, the improper revelation of which could do great harm to the organisations to which they relate. Such inner intelligence may place receivers in a serious ethical and professional dilemma where they regard it in the public interest to reveal what has been discovered. The extent of such potential outpourings has become the more likely in that we live in what has been described as an audit explosion and an audit society :

"The word 'audit' is being used in the UK with growing frequency. In addition to financial audits, there are now environmental audits, value for money audits, management audits, forensic audits, data audits, intellectual property audits, medical audits, teaching audits, technology audits, stress audits, democracy audits and many others besides. More generally, the spread of audits and quality assurance initiatives means that many individuals and organisations find themselves subject to audit for the first time and, notwithstanding protest and complaint, have come to think of themselves as auditees. Indeed there is a real sense in which 1990s Britain has become an 'audit society'." (Power 1994).

There are now many more individuals that possess sensitive information, and so the potential for whistleblowing is at an all time high. Referring to professions, Metzger (1987, 10) has stated that from an historical point of view, the dominant inclination of society was to "salute the professions as corporate guilds that protected civil morality and social solidarity from the corrosion of modern egotism". Some may regard this Durkheimian type of view as overstating the contemporary role of the profession, but on the other hand professions are giving unprecedented emphasis to ethical considerations, partly under the weight of regulatory pressure, some emanating from the European Union.

The impetus for the research was reading the attacks on internal audit whistleblowers by Courtemanche (1986, 1988, 1989), and the lack of any support for them through their professional association. The definition of the Institute of Internal Auditors Inc (IIA Inc) Position Paper on Whistleblowing (Internal Auditor, December 1988, p16, see Appendix A) is :

"The unauthorised dissemination by internal auditors of audit results, findings, opinions, or information acquired in the course of performing their duties to anyone outside the organisation or to the general public."

Whistleblowers seemed to be upholding their professional obligations, yet were often suffering the double ignominy of loss of employment and censure, generally implicit, from the professional body. Given the public interest involved in hearing the revelations of whistleblowers, it seemed worthy of research effort to dig deeper with the basic aim of discovering whether there was a case for revising IIA policy. To this end it was decided to:

- (i) examine whistleblowing in the analogous professional area of external auditing.
- (ii) review and critique official IIA policy.
- (iii) discover cases of internal audit whistleblowing to see official policy at work in the real world.
- (iv) consider the model of participant observation, as being an analogy easily fitting the internal audit role, and being a context in which the sort of information which may give rise to whistleblowing is more likely to be discovered.
- (v) investigate the concept of social auditing as being the type of auditing which intentionally involves itself in areas which, if not resolved, can easily result in whistleblowing activity.

(vi) paint the wider canvass of whistleblowing outside audit, including disaster situations, with examples, in order to shed light on what the policy response should be within audit contexts.

(vii) consider the efficacy of legal protection for whistleblowing.

(viii) look at the possibility of introducing codes of ethics to help to resolve whistleblowing situations.

(ix) in the light of this research endeavour to draw overall conclusions as to the way forward for the internal auditing profession as to whether it should be able to accommodate whistleblowing.

Our discussion falls into several parts. We start in chapter 2 by outlining definitions found in the literature. Chapter 3 discusses the external auditor and the development through which a hundred years' tradition of outlawing whistleblowing has recently undergone gentle erosion. We then turn to internal auditing, and consider whether the IIA Position Paper should be regarded as the last word on the subject, and examine actual incidents of internal audit whistleblowing. We consider the added opportunities provided for whistleblowing through participant observation and social audits. This is followed by a review of the experiences of whistleblowers in other professional areas and in disaster situations. Finally we look at the legal protection available to whistleblowers, the formulation of codes of ethics, before we draw conclusions as to the future of whistleblowing.

CHAPTER 2. DEFINITIONS.

In this chapter a series of definitions is presented before the definition adopted by the IIA is considered. It is argued that this definition is inadequate and ill-considered. Even the IIA-UK has found it necessary to amend the definition. Finally a definition is presented which is more comprehensive.

The first time that the term 'whistleblowing' is believed to have been attached to a case was the 1963 publicity surrounding Otto Otopka (Petersen and Farrell 1986, 2-3). He gave classified documents concerning security risks in the new administration to the chief counsel of the Senate Subcommittee on Internal Security. The then Secretary of State, Dean Rusk, dismissed him from his job in the States Department for conduct unbecoming a State Department officer. Alternative terms for whistleblowing may be conscientious objector (Beardshaw 1981), ethical resister (Glazer and Glazer 1989), mole or informer (Benson 1985.), concerned employee (Thompson 1987), rats (quoted in Orr 1981) or licensed spy (Clitheroe 1986).

Definitions tend to be scarce. Often a series of examples are provided from which a definition is to be assumed. State official secrets acts provide some boundaries at the extremes, and in the USA we have the First Amendment to the Constitution ("....Freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances") (Berns 1965), and the Fourteenth (life, liberty and property not to be deprived without due process of law, and equal protection of the laws for all), as well as numerous sections of acts which are loosely referred to as whistleblower acts, but which do not use the term. They tend to talk about employee disclosure of information, although the False Claims Act (31 USC 3734) does use the header "Whistleblower Protection" (Kohn and Kohn

1986). Beyond this, we enter the murky and uncertain area of employment law.

Whatever the legal phraseology, whistleblowing is the term used in the debate on the subject. A quick survey of some of the definitions in use reveals both the variability and the loose way in which they have been spawned :

"The employee is said to have 'blown the whistle' when, without support or authority from his supervisors, he independently makes known concerns to individuals outside the organization."
(Chalk and von Hippel 1979)

"Whistleblowers sound an alarm from within the very organization in which they work, aiming to spotlight neglect or abuses that threaten the public interest." (Bok 1980a)

"Whistleblowing is an attempt by a member or former member of an organization to bring illegal or socially harmful activities of the organization to the attention of the public."
(James 1980)

In a second bite of the cherry, James (1994) provides a slightly more general definition in terms of wrongdoing :

"Whistleblowing may be defined as the attempt by an employee or former employee of an organization to disclose what he or she believes to be wrongdoing in or by the organization."

"Whistleblowers, as we know, are employees who believe their organization is engaged in illegal, dangerous, or unethical conduct. Usually, they try to have such conduct corrected through inside complaint, but if it is not, the employee turns to

government authorities or the media and makes the charge public." (Westin 1981)

"Whistle-blowing is a term that has come to mean informing persons outside the company - usually government regulators or authorities - about suspected wrongdoing." (Willson and Root 1989)

Another writer takes two bites of the cherry, starting with an approximate definition before moving on to a final, even if somewhat unwieldy definition. The initial definition is :

"As a first approximation, whistleblowing can be defined as the release of information by a member or former member of an organization that is evidence of illegal and/or immoral conduct in the organization or conduct in the organization which is not in the public interest." (Boatright, 1993, 131)

Following discussion of a number of pertinent issues, Boatright posits his final definition:

"Whistleblowing is the voluntary release of nonpublic information, as a moral protest, by a member or former member of an organization outside the normal channels of communication to an appropriate audience about illegal and/or immoral conduct in the organization or conduct in the organization that is opposed in some significant way to the public interest." (Boatright 1993, 133)

One definition is more permissive than some, but claims to be full and elemental :

"An act of whistleblowing occurs when:

1. an individual performs an action or series of actions intended to make information public;
 2. the information is made a matter of public record;
 3. the information is about possible or actual, nontrivial wrongdoing in an organization;
 4. the individual who performs the action is a member or former member of the organization.
- (Elliston 1985,15).

The definition of the IIA Inc Position Paper on Whistleblowing (Appendix A) is :

"The unauthorised dissemination by internal auditors of audit results, findings, opinions, or information acquired in the course of performing their duties to anyone outside the organisation or to the general public."

The IIA Inc is the world-wide professional body with headquarters in Florida to which other national institutes are affiliated. However there has been a degree of U.S chauvinism since it is also the Institute for the U.S., where it was founded in New York in 1941. This began to change in 1993-1994 with a policy of globalisation and the internationalisation of committees. We can immediately see that this definition is of the class of one "introduced quickly and used carelessly" (Elliston 1985, 4), and has none of the fullness of other definitions. It is so keen to damn whistleblowing from the outset that it does not even bother to mention wrongdoing. This pale IIA Inc definition may be amended to reflect the circumstances of the external auditor, but there will be some legal complexities involved in so doing, as well as ethical and professional

judgements to be made. The Institute of Internal Auditors-UK (IIA-UK), originally a set of chapters of IIA Inc starting in 1947, and an autonomous institute affiliated to IIA Inc from 1976, issued in April 1994 a Professional Briefing Note entitled "Whistleblowing and the Internal Auditor" (Institute of Internal Auditors-UK 1994). This highlights inadequacies in the IIA Inc definition with, it is argued, whistleblowing truly implying that the message being communicated relates to perceived wrongdoing of some form which had not previously been disclosed, as well as also applying to unauthorised communication *within* the entity. This leads to the IIA-UK modified definition:

"The unauthorised disclosure by internal auditors of audit results, findings, opinions, or information acquired in the course of performing their duties and relating to questionable practices."

(Institute of Internal Auditors-UK 1994, 3)

For a fuller, more generalized definition, we may take the version that it is "the act of disclosing any information that an employee reasonably believes evidences a violation of any law, rule or regulation, mismanagement, corruption, abuse of authority, or threat to public health and safety at the worksite" (Peters and Branch 1972).

CHAPTER 3. THE EXTERNAL AUDITOR

The external auditor is related to the internal auditor through standards and guidelines from both perspectives on the extent to which the two should cooperate and collaborate. Although the scope and purpose of each profession are different, there are enough similarities to make comparison useful. At the very least, if whistleblowing should be permitted for the external variety in areas of collaboration, the internal variety cannot avoid becoming implicated.

External auditors find early in their training that they are watchdogs and not bloodhounds (re. Kingston Cotton Mill Co (No2) 1896, 2 Ch 279; Vinten 1989a) and, following the Caparo decision (Caparo Industries plc v. Dickman and others 1990 1 All ER 568; Mills 1990) the duty of care to third parties has been more closely defined, and thereby restricted. The Caparo case dictated that a duty of care was only owed to the current group of shareholders, and not third parties, whose identity could not be envisaged. Looking over the debates on the role of external auditors around the recessions of 1973-74, 1980-81 and 1990 onwards one immediately experiences *deja vu*. It is enlightening to look at the different waves, and the auditing reaction. The cynic will argue that *plus ça change, mais c'est la même chose*: twenty years of non-progress. The landmark reports of the period are the Corporate Report in the UK, the Cohen Committee Report in the US, and the Adams Committee Report in Canada (Accounting Standards Committee 1975; Cohen Committee 1978; Adams 1978; Gwilliam 1987, 110), all of which referred to the potential or actual expectations gap between auditors and their various publics. The cynic will dismiss these reports as inconsequential window-dressing exercises. Roger Adams reviewed the situation to the mid 1980's (Adams 1986), and the MacDonald Commission represented the latest Canadian thought on the matter (MacDonald Commission 1988).

The optimist, with a belief in constant historical progress, will see auditors as becoming increasingly cautious with each recessionary wave. Each recession results in greater conflicts of interest between careful and critical auditors and their boards of directors, with pressure being applied on auditors as adverse results are being produced. The optimist will assert that the 1973-74 recession taught auditors some useful lessons which led to many more going concern qualifications in the subsequent recessions. This is an interesting hypothesis to investigate, although firms remain highly vulnerable in the light of the litigation explosion.

The realist, reading through two decades of Department of Trade and Industry Investigation reports (Sherer and Turley 1991) will recognise an auditing profession needing to tackle the self-same eternal issues, falling short of the mark on occasions, and indulging in a process that is over-secretive and involving boardroom politics rarely reported or commented on. There have been genuine professional advances, the establishment of the Auditing Practices Committee in 1976 being one, and although these various responses to each recessionary wave have represented progress, it may sometimes have seemed merely a slight advance on the efforts of a King Canute.

Cases such as Court Line in our first period are easily replicated by similar cases in our second and third period. There was an irony with the English and Welsh Institute of Chartered Accountants declaring that weaknesses in the audit of the final accounts of Court Line, the holiday group which failed in August 1974 leaving thousands of holidaymakers stranded, would be unlikely to recur.

It is difficult to find evidence that the underlying issue has changed by period two, although as in all periods, we can find occasional examples of an auditor being

prepared to take a stand. Finnie Ross Allfields resigned from the Cope Sportswear audit in 1980 and two days before the AGM sent shareholders a long letter under section 16 of the 1976 Companies act. The letter, signed by Michael Freedman, Finnie's senior partner in Leeds, said: "We encountered extreme difficulty in persuading your directors to accept the very material amendments which we thought necessary."

The alterations which Fannies forced through and which led to their resignation included 'numerous adjustments to accounts of individual group companies' as well as additional provisions against debtors and also stock and work in progress of £115,000 and £208,000. The adjustments 'ultimately gave rise to alterations totalling in excess of £1.325 million resulting in a pre-tax loss of £588,541.' The result was that the Cope board 'in view of these disagreements and the changing nature of the group' put forward Arthur Andersen as replacement.

It is informative to see how easy it is to change auditors in situations such as this. This lengthy explanation, which the 1976 Companies Act was designed to achieve, brought matters into the open, and was also the first occasion where the auditor's letter has revealed more about the background to the argument between auditors and board than there was in the original auditor's report. In that report Fannies revealed that there had been a breakdown in the accounting systems of a subsidiary and also said that loans to directors of £32,000 had contravened section 109 of the 1948 Companies Act. Section 123 of the 1989 Companies Act inserted two new sections 394 and 394A into the 1985 Companies Act and requires an auditor, ceasing to hold office for any reason, to deposit at the company's registered office a statement of any circumstances which he or she considers should be brought to the attention of the members or creditors. If there are none, then a statement to this effect has to be deposited. In the case of resignation,

such a statement is mandatory. There are also stipulations relating to notifying the Registrar of Companies, and those entitled to receive the accounts. This should rectify some of the previous abuses concerning changes of auditor.

The traditional attitude appears in an influential report of the mid 1980s (Benson 1985). Although it refers to the recommendation of the Davison Committee, which had reported a month earlier in October 1985, that guidance from the Institute of Chartered Accountants of England and Wales on the reporting of suspected fraud by clients should be revised in favour of reporting to the appropriate authorities (Davison 1985), Lord Benson returned to the doctrine of near-absolute client confidentiality :

" If pressures are to be put upon the auditor which causes him to be regarded as a possible mole or informer with the result that he takes action without his client's knowledge, or when there is no duty to do so, the integrity of the profession is destroyed. We believe that any move in this direction would meet with widespread objections, not only from auditors, but from the business community at large and from other professions, since such practices would need to be extended to the professions generally. "

It was therefore resolved that this should not happen unless two cardinal conditions were fulfilled:

- (a) The law or professional directive so demand; and
- (b) The client is first informed.

3.1 THE WATERSHED.

In the present period it is possible that we have come to a watershed in which the rights and responsibilities of auditors is beginning to crystallise in an unprecedented fashion. Eight factors are evidenced in support :

1. There may be a gathering storm over the result in the Caparo decision (Caparo Industries plc v Dickman and others, House of Lords, 8th February 1990, 1 All ER 568), which reversed the trend of third party liability law over the past half-century. Auditors now owe only a duty of care to the current group of shareholders as a class. This has also reversed the dichotomy of the auditing profession attempting to minimize liability contrasted with government, public and the judiciary seeking to enlarge it. For the time being it is auditors and judiciary versus public and government. However governments have ways of dealing with a rogue decision, and there is a trend in English legal reform to codify so as to reduce the uncertainties introduced by an excess of judge-derived case law (Vinten 1990a).

2. The Auditing Practices Committee in its 1990 guideline on the auditor and fraud, five years in the making, and its exposure draft auditing guideline on the auditor's responsibility in relation to illegal acts, has come closer than ever before to permitting or at least condoning an element of whistle-blowing. One can but wonder if this is simply in reaction to the writing on the wall contained in the Financial Services Act 1986, the Building Societies Act 1986 and the Banking Act 1987, which describe the circumstances in which auditors should go directly to the regulatory authorities to protect the interests of shareholders or depositors. Normally the auditor's first step is to alert the client's management to the existence of fraud or illegality. However, if senior managers or directors are involved or condoning such acts, the auditor may

bypass the board of directors, even the non-executive directors and the audit committee, and report directly to the regulatory authorities. This may be justified where a material gain or loss is likely to result for any one person or group of people, or a fraud is likely to be repeated with impunity if not disclosed, or there is a general management ethic of flouting the law and regulations. All this is a great gain over the previous situation in which the only matter the auditor was required to report was treason - a topic untreated in auditing guidelines until the Institute of Chartered Accountants of England and Wales issued their Guidance on Professional Conduct for Members in Business on 9 January 1991.

3. The politicians continue to express concern. With the widening of the expectations gap following the Caparo decision, the then corporate affairs minister was keen that auditors should not seek to take undue shelter behind it. Auditors should do more to reassure the public about the role they play in identifying fraud, Mr John Redwood, corporate affairs minister, said in a Department of Trade and Industry Press Release on 8th October 1990 :

"Auditors have an immensely important role in the health of the business community and should be seeking ways to live up to the public's expectations," the minister said in an address to the Joint Council Conference of the UK's three institutes of chartered accountants. Mr Redwood alluded to the so-called "expectation gap", between what the public think auditors do and what auditors actually do. Under UK law, auditors are merely required to form an opinion as to whether accounts are "true and fair" and are not obliged to look for fraud. "Although it is right to remove popular misunderstandings. It would be wrong for the profession to focus on lowering expectations," the minister said. He added that the profession's move this year to define the circumstances in which the auditor should report fraud to regulatory bodies was a

step in the right direction but was not enough. He offered no specific recommendations for future action but said he welcomed recent moves to overhaul the Auditing Practices Committee.

On the other side of the House we have Austin Mitchell, Labour MP for Great Grimsby, who criticizes the profession for putting profit before independence. He comments on how abuse of accounting standards, and by implication lax auditing, have contributed to corporate failures such as Coloroll and British and Commonwealth. Recommendations being considered are that: auditors of public companies should be rotated; accountancy firms should provide financial information about themselves; non-audit services, notably management consultancy, should be curtailed; and that the profession should be regulated by a statutory body similar to the Office of Telecommunications (OfTel) which monitors the telecommunications industry.

4. The whistleblowing principle is now being countenanced as between fellow accountants, with a duty to inform on colleagues. Chartered accountants are obliged to "blow the whistle" on colleagues who are dishonest or do bad work, according to rules first published in draft on 8 October 1990 by the Institute of Chartered Accountants in England & Wales.

The move, subsequently voted in by the Institute's membership of more than 90,000, came as part of a general overhaul of its disciplinary procedures. The institute envisaged appointing an independent ombudsman to review decisions of its Investigation Committee, and hoped to take on new powers to intervene in members' practices. Under the rules, accountants are obliged to notify the Institute about "misconduct or probable misconduct" by fellow members. Previously, members reported on each other for unethical practice promotion, such as aggressive advertising,

but not for potentially more serious matters. The rule applies to all chartered accountants, whether in practice or in industry, and is designed to strengthen the resolve of those who are in two minds about reporting on colleagues. It is also intended to demonstrate the willingness of the profession to deal with those who fall short of its standards.

Precisely what constitutes "misconduct" has yet to be defined. The term seems broad in scope, covering "all indictable offences" and therefore everything from murder to minor fraud. The Institute has said that the Law Society has had a similar rule in place for years and it gives rise to no difficulties in practice. The proposed independent ombudsman will adjudicate on cases where, after a complaint, the Institute's Investigation Committee has ruled that no prima facie case exists against a member. The Institute receives about 2,000 written complaints every year, of which only a handful are not resolved. The Institute is being given increased powers to take control of the affairs of accountants who commit serious criminal offences, suffer from "mental incapacity" or abandon their practice.

The proposals do not tackle the way in which Institute members are disciplined for serious frauds or crimes under the so-called Joint Disciplinary Scheme, which has been subject to another review. The new rules also include the power to order members to return papers and complete clients' work.

5. The higher standards that already pertain in the public sector, due to the greater need for accountability there, may act as a role model for the private sector. An example is the Audit Commission report 'in the public interest' to local tax payers.

6. The establishing of the Auditing Practices Board on 1st April 1991 heralded more

than just cosmetic change to its predecessor, the Auditing Practices Committee, and indicated a serious intent to sort out the myriad of problems. One such was the very vagueness in the central concept of materiality (Lee 1984; Leslie 1985, Vinten and Chong, 1994) which permits huge and material variations in actual practice of which readers of accounts are blissfully unaware. The less ethical client could well search out auditors with wider margins of materiality, and to call this the exercise of professional judgement debases the whole activity.

7. The prominent emphasis on the public interest in the International Federation of Accountants 'Guidelines on Ethics for Professional Accountants' of July 1990. The relevant section reads as follows:

"THE PUBLIC INTEREST

A distinguishing mark of a profession is acceptance of its responsibility to the public. The accountancy profession's public consists of clients, credit grantors, governments, employers, employees, investors, the business and financial community, and others who rely on the objectivity and integrity of professional accountants to maintain the orderly functioning of commerce. This reliance imposes a public interest responsibility on the accountancy profession. The public interest is defined as the collective well-being of the community of people and institutions the professional accountant serves.

A professional accountant's responsibility is not exclusively to satisfy the needs of an individual client or employer. The standards of the accountancy profession are heavily determined by the public interest for example:

- o independent auditors help to maintain the integrity and efficiency of the financial

statements presented to financial institutions in partial support for loans and to stockholders for obtaining capital;

- o financial executives serve in various financial management capacities in organizations and contribute to the efficient and effective use of the organization's resources;
- o internal auditors provide assurance about a sound internal control system which enhances the reliability of the external financial information of the employer;
- o tax experts help to establish confidence and efficiency in, and the fair application of, the tax system;
- o management consultants have a responsibility towards the public interest in advocating sound management decision making.

Professional accountants have an important role in society. Investors, creditors, employers and other sectors of the business community, as well as the government and the public at large rely on professional accountants for sound financial accounting and reporting, effective financial management and competent advice on a variety of business and taxation matters. The attitude and behaviour of professional accountants in providing such services have an impact on the economic well-being of their community and country.

Professional accountants can remain in this advantageous position only by continuing to provide the public with these unique services at a level which demonstrates that the public confidence is firmly founded. It is in the best interest of the worldwide accountancy profession to make known to users of the services provided by professional accountants that they are executed at the highest level of performance and in accordance with ethical requirements that strive to ensure such performance."

Although much of this is reminiscent of the landmark reports referred to at the outset, the expression is more focused and concise, and is a useful statement of the issues being discussed.

8. In March 1994 the Auditing Practices Board issued a Statement of Auditing Standards 620 on "The auditors' right and duty to report to regulators in the financial sector" followed by Practice Notes in July on (i) The Auditors' Right and Duty to Report to the Friendly Societies Commission under a statutory instrument duty contained in The Friendly Societies (Auditors) Order 1994, and (ii) The Auditors' Right and Duty to Report to the DTI in Relation to Insurers Authorised under the Insurance Companies Act 1982 under the Auditors (Insurance Companies Act 1982) Regulations 1994. This UK legislation implemented two EU Directives - the Third Non-Life and the Third Life Directives - which were implemented on 1st July 1994, in particular with reference to new criteria for sound and prudent management.

The answer to the question whether the whistleblowing external auditor is an oxymoron, is that the 1990's will mark the first decade of general recognition that whistleblowing auditors may not invariably be a contradiction in terms. In certain well-defined circumstances they have a right to whistleblow. In other circumstances they have a right so to do. What, however, of internal auditors? An experiment involving the prediction-task judgements of 106 internal auditors from the public and private sector, found internal auditors much less likely to whistleblow than external auditors (Arnold and Ponemon 1991). To the topic of the internal auditor we now turn.

CHAPTER 4. THE CONTRADICTION OF INTERNAL AUDIT?

In this chapter the main internal audit professional proclamations are examined. This is followed by the exegesis on the proclamations undertaken by Gil Courtemanche, who has become a type of unofficial spokesperson on the issue. Although he is not an office bearer, he has authored two texts which the IIA Inc commends, and the article he wrote on whistleblowing was given the Thurston Award for the best article that year, and it is likely that the endorsement the article gave to the official doctrine was a major factor behind the award.

Internal auditors are almost always at one remove from the public, and so have not been exposed to the same public criticism and debate as has the external auditor. It is instructive that the public interest was a topic selected for research at the outset of the profession in the 1940s, but this never in fact materialised (Vinten 1993a). As a generally non-statutory activity, albeit custom-and-practice in large parts of the world economy, it would be foolish to make internal audit a front line of defence in revealing corporate abuse. Occasionally an organization may allocate a duty which does involve a direct relationship with the public. An example is the building society which requests investors or borrowers to communicate direct with the internal auditor should there be any discrepancy on balances or interest. In both cases the auditor is dealing with the equivalent of a shareholder, not just with a member of the public or a client.

One has to realise that the occupational hazard of the IIA is to believe that their standards and Code of Ethics are universally accepted. A study in the US of all 2,012 Certified Internal Auditors, with 1,414 responding, found that the influence of the IIA through its Certified Internal Auditor examination was not as great as may have been imagined. Not surprisingly, the individuals who obtained the qualification did so as a

means of professional advancement, and thought highly of it. Unfortunately their expectations were not fulfilled to any great extent, either in terms of their own feelings, or in terms of the perceptions of their employers, as evidenced by promotion or pay rise (Agrawal and Siegel 1989). The writer recorded his impressions during a visit to New York City in May 1989:

"One only had to compare the listed members of the New York Chapter of the IIA by company affiliation with the numbers of internal auditors in each company to realise that in some cases only ten percent were in membership. These were not peripheral companies. They could certainly be said to have an IIA culture. What was even more surprising and paradoxical was that in one company, spending time acquiring the CIA qualification appeared to be a positive disadvantage. Those who gained the qualification tended to find those who had concentrated whole-heartedly on the job were being promoted before them. Often these CIAs left, hence depriving the company of even more IIA members." (Vinten 1989).

A subsequent letter to the Director of Professional Services at the IIA in Florida elicited the response that the IIA was aware of this situation, concerned about it, and considering a solution. Part of this solution was to introduce a company membership scheme. Survey evidence suggests the less than universal adoption of the IIA Standards. The 1985 Survey of Internal Audit in the UK and Eire found that only 36% of UK organisations required substantial adherence to the IIA Standards (IIA-UK 1985). There was no separate question on the Code of Ethics, and although section 240 of the Standards contains a cross-reference to the Code:

" 240 Compliance with Standards of Conduct - Internal auditors should comply with professional standards of conduct.

.01 The Code of Ethics of the Institute of Internal Auditors sets forth standards of conduct and provides a basis for enforcement among its members. The 'Code' calls for high standards of honesty, objectivity, diligence, and loyalty to which internal auditors should conform."

It would be hazardous to suggest that respondents had the Code of Ethics specifically in mind when answering the question on the Standards generally, and future surveys should include questions specifically on the Code.

The 1985 Survey included wherever possible question responses from the Surveys of 1979 and 1983 (IIA Inc 1979 and White and Xander 1983), and all these surveys are referred to as being international. In reality this amounted to North America, and so was scarcely international. 72% and 74% in these two surveys reported substantial adherence to the IIA Standards, and the 1985 Survey draws the conclusion that there is a significant difference here. This is the wrong conclusion. The US Surveys of 1979 and 1983 use as their sampling frames the membership lists of the IIA. This introduces an overwhelming bias in favour of the IIA Standards. The UK Survey based its sampling frame on organisations, and so avoided this form of bias. Even so, there was a disappointing response rate of 34%, and if it is assumed that IIA Standards users are more likely to reply, it might be necessary to divide the 36% of IIA Standards adherents in the UK by up to one third.

Rather as the external auditor has sought to minimize professional liability, so the internal auditor has emphasized the dogma that one's reporting channel is to the organization, which is defined narrowly as consisting of the managers and directors. This does mean that one significant aspect of professionalism, responsibility to the

public, is more difficult to sustain. There may be indirect benefit, but the public named in the professional statements is twofold as already stated. From this follows the received wisdom that whistleblowing is not to be countenanced for the internal auditor. There is an IIA Position Statement on Whistle Blowing. Position Statements do not have the same status as the General and Specific Standards and the Code of Ethics, but are issued to provide guidance, although this guidance may be regarded as reasonably authoritative. The Position Statement indicates that "for organizations with internal audit functions that adhere to the Standards and Code of Ethics of the IIA and that are headed by an audit director with full access to an active audit committee, there should be no need to report in an unauthorized manner to anyone outside the organization". Where this does not apply, the internal auditor is still obligated by the Standards and Code of Ethics to report through the hierarchical channels first within the internal audit department, then through the levels above this, and ultimately, if necessary, to the board of directors to seek timely resolution. Failing this, legal advice should be sought, the position paper suggests. The only concession made is where there happens to be a state or federal whistleblowing statute.

4.1 THE PROFESSIONAL STANDARDS BULLETINS

There remains one further potential source of guidance in the form of the Professional Standards Bulletin (PSB), which is regarded as being "semi-authoritative" since it undergoes a reduced exposure process and approval requirement. It does not amend existing standards or guidelines or set new ones, and its aim is to help practitioners to apply the existing pronouncements. (IIA, 1991). Since the PSB was invented in 1981 the number has never exceeded twenty in one year. Those that might have a bearing on our subject in the UK numbering are:

PSB 26 (US.83:5) Suspected Wrongdoing: Does an internal auditor have responsibility to notify outside authorities of suspected wrongdoing? No direct answer is provided to this, although reference is only given to internal reporting channels.

PSB 58 (US.86:2) Reporting underbilling to Contractors: Is the internal auditor ethically required to report findings to an operator or contractor when an outside audit is performed (e.g. joint venture or contractor audit) and exceptions are found which would create additional costs for the internal auditor's company? The answer is that where the sum involved is material and/or especially clear-cut, internal audit management should be consulted, following which the findings may be reported to the third party. Otherwise both internal audit management and the company's operating employees responsible for the contract or service should be consulted. It is then their responsibility to resolve the underbilling with the outside firm. The reasoning given by the PSB is that there could be underlying issues or historical events bearing on the eventual settlement, but of which the internal auditors are unfamiliar. It is interesting that only the underbilling situation is mentioned.

PSB 71 (US 86:10) Compliance with IIA Code of Ethics: How does the IIA determine compliance with the IIA's Code of Ethics? The answer refers to the procedures which may end in censure or suspension/expulsion from membership, with the results printed in a membership periodical.

PSB 78 (US87:4) is on Expert Witness Testimony, and suggests the internal auditor should inform the appropriate members of their organization's management about court appearances. Presumably this is so that they may vet the nature of the appearance, and ensure that it will not disadvantage the home organization in any way.

PSB 79 (US 87:5) Handling a Management Impropriety wants to know if this should be handled at a very high management level. The suggested procedure is to go through the chief internal auditor, who then informs the individual before he or she hears from a non-audit source. This is stated as minimizing the possibility of jeopardizing future working relationships should the allegation prove groundless, as well as ensuring clear communication of facts rather than of rumour. Following this initial meeting the next-up line manager to the employee should be invited to a three-way meeting to discuss "a mutual item of interest". Utmost confidentiality and the avoidance of defamation are emphasized, the audit committee may possibly be informed, and the concluding draft report should be reviewed by a lawyer prior to being issued.

PSB 80 (US 87:6) Handling Tip-Offs or Complaints: How should an auditor handle a confidential "tip-off", or oral or written complaints from employees or others that could have a significant exposure for the organization? The auditor is to caution the individual that a serious charge is being made, and that it could have unfavourable consequences for the caller, the employee or situation being targeted, and perhaps the organization itself. The caller should be encouraged to consider the implications of the allegations that are about to be made before proceeding further. The auditor should explain that the normal policy is to make every effort not to reveal sources, but that no guarantee can be provided, and if this makes the person uncomfortable, it would be desirable for them to write an anonymous letter. This PSB is of particular interest since it involves internal whistleblowing, which is considered perfectly legitimate.

PSB 88-8 (no UK numbering). Disciplinary Action. The new 1988 Code of Ethics is the opportunity to ask what disciplinary action may be taken under it. This involves a three member panel with attorneys present for each side if desired, with censure, suspension or expulsion possible outcomes.

4.2 SUMMARY OF PSBs.

It is clear that in these PSB's loyalty to the organization, its board of directors and management, is paramount, although PSB 26 inadvertently or otherwise avoids comment on the wider issue. For contractor underbillings, only in restricted circumstances is the auditor to "spill the beans".

Internal whistleblowing is countenanced, but the individual is to be given the organization's health warning. Management impropriety needs special handling, but this does not include going outside the organization. In an expert witness situation the organization could veto appearance. Whistleblowing auditors could find they are on the wrong side of the code of ethics in the event of a complaint being made against them.

4.3 THE COURTEMANCHE VIEW.

These uncompromising statements of the Position Statement and the PSB's are perhaps based more on expediency than on idealism. Some would argue that the internal auditor is not in the business of idealism:

"Society will be much better served if, by rejecting special social-control functions, internal auditors are enabled to form a closer partnership with management and to broaden the scope of their beneficial services. Article VI (Now Article 9) of the Code (of Ethics) must be understood as requiring internal auditors to protect the employer from the consequences of his lack of knowledge concerning illegal acts committed within the organization".
(Courtemanche 1986, 55-56)

Courtemanche considers that internal auditors should not act as self-appointed

watchdogs over the behaviour of their employers, and he makes it clear that internal auditing is not independent of management, but independent because of management (Ibid, 43). Auditors need to work closely with management otherwise they are cut loose from their moorings, set adrift without a flag (Ibid, 44). Courtemanche seems to believe that auditors should bend with their managements, even if the bending includes a figurative interpretation of laws, rules and regulations. In his article on whistleblowing, Courtemanche reports the confusion and disagreement on the issue he has discovered among both academics and practitioners. His view manages to be clear-cut and unambiguous, and indicates a failure to realize the necessity to explore various trade-offs in ethical thinking. One business researcher warns against simplifying ethics :

"The more uncertain the issues, the more contemptuous and intolerant some people appear to be in the face of alternative views. Such close-mindedness, as in other disciplines, is the most serious enemy of rational, consistent conduct."

(Donaldson 1989)

This comment is exemplified by Courtemanche's comment that :

" The modern audit director has no problem interpreting the Code - it's simply a matter of taking words and phrases at their obvious meaning in the context of the Code as a whole and in the context of the general body of IIA pronouncements."

(Courtemanche 1989, 178).

Courtemanche's overriding objective is that the internal audit profession should not be severely damaged by any loss of trust on the part of employers, and he considers that the IIA will best serve its current and future membership by "lobbying vigorously against any ill-advised legislation that would enlist the profession into a law-

enforcement role for which it was never intended." (Courtemanche 1988, 41). Whistleblowers, whom Courtemanche describes emotively as voluntary snitchers on their employers, can expect neither support nor sympathy from this quarter. In those extreme cases in which the employer's conduct represents such an overwhelming threat to the health, safety, property or financial security of others that all reasoning individuals would consider action imperative, Courtemanche's advice is do what you must, but preferably out of public view and as concerned citizens rather than as internal auditors. His six guidelines are that internal auditors should:

1. Report all findings of employee fraud and unlawful practice to their employers.
2. Not report any audit findings outside the organization unless authorized by their employers.
3. Avoid the risk of damaging the lawful interests of their employers through the audit process itself.
4. Consult with company lawyers wherever it appears that an audit investigation might uncover unlawful practice.
5. Manage their files to avoid damage to the lawful interests of their employers.
6. Not be a party to any illegal or improper activity.

Courtemanche goes on to refer to internal audit as being a unique profession with a unique role and a unique ethic (Ibid, 39). Some might regard this uniqueness as residing in total failure to give any interest to the public and societal interest, and being

the only body regarding itself as a profession that wishes to be known by this attribute. Others will see the ethics of cover-up and deceit, and wonder whether this is the sort of profession to be recommend. The inherent ambiguity of the internal audit role can produce a very thin dividing line between normal audit reporting and whistleblowing.

4.4 BEHAVIOURAL RESEARCH.

The ambiguities of the internal audit role can be observed in research into the behavioural aspects of internal auditing, which surveyed those names that others give to internal auditors which the auditors both like and dislike. It is interesting that some names, such as supersleuth, occur in both category. Some of the terms that pleased auditors would certainly seem to have whistleblowing undertones. These included ombudsman, corporate monitor, corporate guardian, watchdog, truth seeker and conscience of the organization. Displeasing terms were more uncompromising and included corporate spies, Gestapo, trouble seeker, busybody and dirt digger (Wilson and Wood 1989). It is clear that within normal internal audit activity there is a perception of others that internal audit is reminiscent of whistleblowing, and that internal auditors may hold some of these perceptions themselves.

4.5 SUMMARY.

The official proclamations of the IIA bearing upon whistleblowing have been outlined. They are generally unsupportive of whistleblowing, although they do reflect ambiguity. This ambiguity is picked up in the behavioural study. External observers of internal audit activity perceive whistleblowing aspects within the function, and this is reflected in the names that are used. Internal auditors seek to deny this. Courtemanche manages a clear-cut view of the situation whereby whistleblowing is basically outlawed.

CHAPTER 5. CRITIQUE OF THE OFFICIAL DOCTRINE.

In this chapter a critique is provided of official doctrine as represented in IIA Standards, and in particular the Code of Ethics, the relevant contents of which is outlined. A classification of three types of ethical code is suggested as a helpful model to clarify discussion. Various influential sources are then quoted which take a more sympathetic view of whistleblowing.

We have already described the Courtemanche view of morality as simplistic. It belongs to early, immature stages of moral development at which concrete rather than abstract thought prevails. Piaget, in his research on 5 to 13 year olds, postulated three overlapping stages of moral development: a 'heteronomous morality' based on unilateral respect for the rules of adult authority; a morality of co-operation and strict equality based on mutual respect among social peers; and a morality of equity based on a flexible, Golden-Rule consideration of the needs of individuals in particular situations (Piaget 1965). Kohlberg developed Piaget's ideas in his six stages, ranging on a continuum from a preconventional, heteronomous morality in which there needs to be an avoidance of breaking rules backed by punishment and obedience for its own sake, to a stage six postconventional or principled universal ethical principle. In this, self-chosen ethical principles are followed. Particular laws or social agreements are usually valid, because they rest on such principles. However, when laws violate these principles, one acts in accordance with the principle. Principles are universal principles of justice: the equality of human rights and respect for the dignity of human beings as individual people (Kohlberg 1976, 31-53). Chris Argyris has further developed these themes in an organizational context. He sees seven developments as characterizing the progression from infancy towards maturity. These are:

1. From infant passivity towards adult activity
2. From dependence towards relative independence
3. From limited behaviours to many different behaviours
4. From erratic, shallow, brief interests to more stable, deeper interests
5. From short time perspective to longer time perspective
6. From a subordinate social position to an equal or superordinate social position
7. From lack of self-awareness to self-awareness and self-control.

Argyris sees formal 'rational' organizations as operating towards the immature end of the spectrum in what he calls 'pseudo- health'. Tasks are reduced to minimal specialized routines with a chain of command in which instructions are given in precisely what to do. The result is that the specialists and departments follow their own ends irrespective of wider interests and even to each other's detriment. In the poor state of managerial interpersonal competence that is found in such situations, matters of concern cannot be raised and discussed. Although openness of communication and the participative approach may form part of official rhetoric (the 'espoused' theory), the reality may be very different (Argyris 1957, 1965, 1985). In collaborative work with Schon two models have been suggested. In Model 1 there is a minimization of generating or expressing negative feelings in public, with one's own thoughts and feelings kept a mystery. It is also necessary to be rational and 'objective' and suppress the voicing of feelings by others, thus protecting oneself and others from facing important issues which often have an emotional content. Learning how to conform is the only learning taking place, and managers strive for complete control. In Model 2 action is taken on valid information in open decision-making with free and informal choice from all those competent and relevant to participate. Managers seek contributions from others, and are able to confront their own basic assumptions, test them in public, and be open to changing their viewpoint. (Argyris and Schon 1978)

The anti- whistleblowers fail to recognize the important distinctions of three types of Code of Ethics formulated by the present writer (Vinten 1990, 10-11). This typology accords with the insights of the writers just discussed, and sheds light on why whistleblowing may be approved or disallowed according to which ideal type one is following. The three types are:

1. **The regulatory code.** This is the equivalent of the Ten Commandments. There is a direct one-to-one correspondence between code and behaviour. Shades of grey are not recognized, with an ethical imperative that is so compelling as to require no further discussion.

2. **The aspirational code.** This is the equivalent of the Wisdom literature of the Jewish Scriptures/Old Testament. "There is nothing new under the sun" is an example from the book of Ecclesiastes. The aim of this type of code is to provide a standard to aspire to, but to recognize that full compliance may rarely be possible, and that one may need to consider practicality and expediency. However such codes rarely provide much help in assessing the merits of alternative courses of action. This leads us to:

3. **The educational code.** This does not believe in rules and regulations, which it believes to be unhelpful or even damaging. To meet one ideal may be to fall short on another one. It believes in the individual conscience of the professional rather than collective decision. This is a contextual ethic. It aims for enlightened discussion of the issues, but then the matter rests in the hands of the matured professional. Post-modernists would certainly find this view of the ethical code nearer to their liking.

The regulatory code seems to be the one assumed by the 'anti-whistleblowers'.

Although there is certainly a time and place for each type of code, or elements of each within a single code, the educational code is the one least developed, but with the greatest potential for coping with the inherent ambiguities of professional ethical situations, and most in tune with the developmental and social psychologists already cited. It is also the only one with a chance of dealing with cultural diversity, both national, organisational and societal. Only by adopting the third approach is there any chance of resolving otherwise insuperable internal inconsistencies in the IIA Code of Ethics (See Appendix B). At present the articles of the Code with a bearing on the subject are:

(2) Members shall exhibit loyalty in all matters pertaining to the affairs of their organization or to whomever they may be rendering a service. However, members shall not knowingly be a party to any illegal or improper activity.

(8) Members shall be prudent in the use of information acquired in the course of their duties. They shall not use confidential information for any personal gain nor in any manner which would be contrary to law or detrimental to the welfare of their organization.

(9) Members, when reporting on the results of their work, shall reveal all material facts known to them which, if not revealed, could either distort reports of operations under review or conceal unlawful practices.

It is clear that the overwhelming emphasis is of loyalty to the organization. Unlawful practices are to be revealed - but to the organization. Internal auditors are not themselves to be a party to illegality or impropriety. This would seem to support the hard-line approach. The problem occurs in seeking to implement the Code, the ethics-

in-action. The only IIA Inc-commissioned survey on the Code presented twenty case study situations to 343 participants and invited rating on a five point scale from dismissal to do nothing as follows :

Scale	Proposed Action
1	The supervisor should consider firing the employee.
2	Reprimand, and record placed in employee's personnel file.
3	Supervisor and subordinate to discuss the undesirable aspects of the action and why it should not be repeated.
4	The action is questionable, but it is unclear that any follow-up action is required.
5	No apparent problem: the action is accepted practice.

Three situations involved loyalty, and one in particular involved whistleblowing:

Situation 17. Thomas, an internal auditor, uncovered a serious situation in which a corporate officer had paid a government official in his state a substantial sum in order to get a governmental contract for the firm. Thomas reported the incident to his supervisor who told him he would take care of the matter. No action had been taken in six months, so Thomas went to the government's legal authorities to tell them.

There was a high degree of uncertainty, with issues far from clear-cut and all possible responses observed frequently. Situation 17, regarded by the study as the most serious of the three because it involved outside action, raised the most confusion. The authors state that government legislation to protect whistleblowers has tended to cloud the loyalty issue and conclude "It is apparent that this ethic principle needs more attention

and discussion." (Dittenhofer and Klemm 1983, 17). It is a pity to discover that there has been a surprising lack of discussion among writers on ethics as to how individuals should work out the conflicts which do arise when their personal views conflict with their organisational responsibilities on matters of ethical import (Blois, 1985, 225). There has, however, been an increase in such discussion over the past decade in the greater quantity of published material on business ethics.

The National Commission on Fraudulent Financial Reporting (The Treadway Commission), a collaborative venture between the American Institute of Certified Public Accountants, the American Accounting Association, the Financial Executives Institute, the Institute of Internal Auditors, and the National Association of Accountants, progressed the debate by recommending that public companies should develop and enforce written codes of corporate conduct. These should foster a strong ethical climate as well as open channels of communication to help protect against fraudulent financial reporting. An employee, when confronted with suspected fraud, should then feel uninhibited to bring the problem to the attention of those high enough in the corporation to solve it without fear of reprisal. The code should also provide an accessible internal complaint and appeal mechanism, such as the use of an ombudsman. For one thing this might avoid external disclosures to government authorities or other third parties, and for another, it might reduce the probability of further anti-retaliatory legislation, for which there is already precedent at both federal and state levels. (National Commission on Fraudulent Financial Reporting, 1987, 35-36).

Internal whistleblowing is certainly encouraged by the National Commission, although in one company at least, The Williams Companies, it was difficult to persuade employees to sign their compliance with this stipulation of their Code of Business Conduct (Hick, Weiland and Miller, 1989, 14). The basis for not stressing external

whistleblowing is that sufficient internal safeguards are to be introduced. However it is not ruled out by the report. The report does shed some doubt on what the stand of the IIA actually is, since the report seems to represent a mellowing of attitude. Martin Weiland, General Audit Manager of Amoco, attributes a more sympathetic attitude to the IIA than is probably justified: "The IIA has taken some very proactive and positive stands on various issues related to ethics, such as the role of audit committees and strong support of the Treadway Commission and Whistleblowing" (Hick, Weiland and Miller, 1989, 15).

Three researchers have identified the vital importance of codes of ethics in companies, and the internal auditor's role in conducting independent reviews of them, even though it is still early days for these (Gavin, Roy and Sumners 1990). Another writer has expressed concern as to whether employees will blow the whistle on an irregularity that they might discover, pointing out that reporting irregularities is an assumption that underlies effective internal control (Johnson 1979). In the analogous activity of management accounting - analogous since it too is a non-mandatory, internal function with similar reporting channels - it has been argued that there is a moral responsibility to challenge or report that which is at variance with professional standards and that has actual or potentially material and harmful consequences (Loeb and Cory 1989). In the case of engineers, it is suggested that since they have considerable control over technological developments, they have an obligation to make greater sacrifices for the sake of the public welfare, and this may include taking the risk of whistleblowing (Alpern 1983, 39- 41).

Those, therefore, who seek to outlaw whistleblowing may well be appearing as increasingly reactionary, and failing to recognize the intrinsic lack of clarity of the situation, and the need to think and discuss further, much as is posited by the

educational type of code. They also fail to recognize the force of a growing number of whistleblower protection acts in the US (Kohn and Kohn 1986), and that the debate on the issue is increasingly world- wide. One example is in Queensland, Australia, in which the Electoral and Administrative Review Commission has been considering a variety of matters, including the protection of whistleblowers (Electoral and Administrative Review Commission 1990).

It is instructive that the Commission of the Speaker of the House of Commons on Encouraging Citizenship provides a definition of citizenship which includes whistleblowing (Stonefrost 1990):

"The challenge to our society in the late twentieth century is to create conditions where all who wish can become actively involved, can understand and participate, can influence, persuade, campaign and whistleblow, and in the making of decisions can work together for the mutual good."

This is the nearest one comes in the UK to any official recognition of the value of whistleblowing and, indeed the attribution of almost a constitutional role.

It is revealing to see the result of an epistolary confrontation between whistleblowing practitioner Arthur Suchodolski, discussed in the next section, and armchair ethicist Gil Courtemanche. Arthur wrote to Gil on January 27, 1988 strongly disagreeing with both the tone and substance of Gil's February 1988 article, which subsequently won an award for the best article of the year in the US journal *Internal Auditor*, thereby providing an element of IIA endorsement. On 6th February 1988, Gil replied:

"Please believe me when I say that I find myself in complete sympathy with you in the

remarkable experience that you had. My article was prepared in the spirit of discouraging trivial and petty breaches of confidentiality between internal auditors and their employers on the theory that this sort of behaviour was a breach of ethics and would pose a grave danger to our profession. Your case was clearly different. The issues were of very large proportions. The shabby treatment given to you certainly cancelled any obligation of personal/professional loyalty and placed you in a position of self-defense - a natural right no one can deny to another. Congratulations on your remarkable achievement. You are indeed a credit to our profession."

It rather seems that when Gil comes face-to-face with a real-life example, his argument is reduced to banality. Few whistleblowers are interested in bothering with "trivial and petty" matters, and even if they did, the immateriality of the issue would mean that the employer would probably not be moved to take much action, and outsiders would be equally disinterested. It is a poor test of Gil's argument that its sole applicability is to the trivial and petty, and that it is incapable of dealing with cases that are of serious moment, and representative of instances that give rise to public concern and debate.

It is even possible for Courtenay Thompson, a fraud consultant who runs courses for IIA Inc, to perceive whistleblowing as being an activity to be encouraged when it relates to employees reporting suspected fraud to internal audit. In this case, internal audit should take steps to protect such employees when the rest of the world seems determined to punish them. This should include the existence of a policy that states that internal audit should establish procedures, policies, facilities, and communication channels to receive, on a confidential basis, information relevant to potential wrongdoing. Thompson views whistleblowing as being an ever present possibility for the internal auditor. He gives the common example of audit managers filtering out findings from audit reports with little or no explanation. In trivial cases the auditor will

probably give grudging assent. If significant but not life- threatening, illegal or immoral, many employees would leave the company, but not blow the whistle. If the finding seemed life- threatening, felonious or abhorrent to moral principles, then some auditors would choose to report outside the chain of command, perhaps to regulatory authorities (Thompson 1987).

An internal auditing manual of encyclopaedic dimensions discusses whistleblowing in its section on fraud. This is on the basis that it is in such contexts that internal auditors are more likely to ponder what their ethical responsibility for reporting is (Willson and Root 1989, 22 : 56-57). The authors consider that the problem has become more acute since the federal government created hot lines and actively promoted their use by anyone to report suspected fraud. Ethically speaking, they do not believe that internal auditors are under any general duty to inform outsiders of suspected wrongdoing. Their ethical duty is to report to management, and it is their ethical duty to investigate - possibly using internal audit as part of the investigating mechanism. Management decides whether to report to outsiders on the basis of all relevant facts and circumstances, including any legal requirements for such reporting. If management fails to act prudently, including failing to report when required by law, the internal auditor's ethical duty is to report to the company's audit committee. The authors, writing theoretically and without having taken the trouble to examine cases such as Suchodolski (1981) in which the audit committee was far from supportive, aver that : " The responsibility of audit committees is such that it is all but inconceivable that it would fail to make proper inquiry and disposition of the situation." In the very rare situations where the auditor is not satisfied, he or she should resign and seek legal advice as to further action to be taken, which may include reporting to the proper authorities.

Two other authors believe that internal auditors have a job role that in certain

circumstances requires that they become whistleblowers (Near and Miceli 1985, 2; Bowie 1982, 145 and 1985, 48-49). In their subsequent research on 1,045 directors of internal audit, Near and Miceli (1988) found that although 80% had observed wrongdoing in the preceding year, and 90% of these had reported it, only 6% of the total respondents had suffered retaliation for reporting. Few felt that the reporting should be done externally. 25% had reported externally, but this had generally been to the external audit team only. These findings agree with the view that whistleblowing should be an exceptional event, even though internal auditors will experience wrongdoing as a regular part of their work.

Similarly, Professor Curtis Verschoor opines that the internal auditor lives constantly on the horns of a dilemma, torn inexorably between conflicting forces. The first is to be part of a problem-solving partnership with operational management, but the second, which is at variance, is to report significant adverse findings to top management and the board of directors (Verschoor 1987). James Treadway (1986) has commented that:

"It is the general belief of our Commission that the internal audit function is far too hidden from public view."

As public awareness inevitably increases, it will become urgent to give frank recognition to the dilemma, and to find a way of avoiding impaling the auditor every time the issue arises. This is no longer a marginal matter to be swept under the carpet, but rather something that strikes at the heart of the very *raison d'être* of internal auditing. In this chapter we have experienced a turnaround of the argument. Whistleblowing is now seen as more central to the core of internal audit activity, rather than being seen simply as a marginal aberration.

CHAPTER 6. CASE STUDIES OF INTERNAL AUDIT WHISTLEBLOWERS.

We present here case studies of internal audit whistleblowers to illustrate the practicalities of the whistleblowing situation, and to permit a consideration as to whether the 'anti-whistleblower' stance seems sustainable in the light of such cases. All the cases are based on interviews with the writer, with the exception of the Urda case, and represent all the cases that have come to light, including from various appeals in articles written by the author. Documentary sources have also been used where available and as referenced. In the first case, the events took place fifteen years ago when there was perhaps less sympathy with whistleblowing than now, and thought had not crystallized even into the ambiguous state of play of the present. Employment law was very much in the tradition of the 'at-will' doctrine, which historically granted the master complete discretion to dismiss the servant. (Blades 1967) The Suchodolski case was the "pioneering" case which was very much in mind when the IIA Inc was formulating its views on whistleblowing. The researcher has corresponded with Suchodolski and has received a dossier of material on the case, including legal documents. The Wells case is one which has more recently occupied the attention of IIA Inc, and the researcher met and interviewed Wells during the IIA International Conference in Phoenix, Arizona in June 1992. Case 6.4 represented a prominent member of the IIA-UK raising the issue, and contributing to the debate in the UK. 6.2 and 6.5 are cited as having taken place in financial institutions where there is much public concern. The first is not well known, and follows confidential disclosure to the researcher. The second has been the subject of widespread media attention, and a telephone interview with the researcher in 1991. Case 6.6 contacted the researcher in 1992.

6.1 THE ARTHUR SUCHODOLSKI STORY

Arthur is one of the unsung heroes of internal audit. A man of principle, whose name needs to be added to the internal audit book of martyrs, and who sacrificed career and livelihood because of his whistleblowing. From 1972 to 1976 he worked for the Michigan Consolidated Gas Company - the largest gas distribution company in Michigan - as an internal auditor. When he uncovered evidence of mismanagement and possible fraud in the credit division of the company, his report was ignored by top company officials. He found an audit department which lacked the respect of the company, and this led to high turnover of staff, as well as the difficulties of being promoted out of audit. He also found that audit reports were often dressed up to present a rosy picture to company management. Despite promises to the contrary, Arthur was passed over for promotion and, finding himself increasingly out of sympathy with audit procedures and practices, he had requested a transfer to another job within the company. He was asked to start the audit of the credit division without a proper plan. Even so he immediately located lax procedures and a mass of problems, with fifty major areas all requiring attention. The most highly significant of these involved the State of Michigan's Aid to Families with Dependent Children Programme from which welfare families received a lump-sum payment from which they were supposed to manage their financial affairs, including their gas bills. After some embarrassing publicity over service disconnections to welfare customers, Michigan Consolidated entered into a "sweetheart" deal with the Michigan Department of Social Services. The company agreed to inform the Department of Social Services prior to cut-off action; the state reciprocated by agreeing to pay the bills for delinquent accounts out of the state's emergency aid fund. Initially payments were modest. However as word spread, abuse multiplied. Welfare recipients were thereby receiving a duplicate payment. Michigan Consolidated sunk into a lethargy in which it took no action to

clear up arrears. In fact the 1976 sum cheated out of state funds was \$19 million. Arthur's audit was taken over by his manager who repackaged it in a way Arthur found unacceptable. Shortly afterwards he was dismissed. (Suchodolski 1981)

Arthur appealed to the company audit committee about both his audit findings and dismissal but to no avail. His by now public revelations were taken seriously by the State, which refused that part of a Michigan Consolidated price increase which appeared to be because of the fraud. The next fourteen years saw several civil court appearances and gradual but painful, uphill vindication, with also various other episodes coming to light to shed doubt on the corporate integrity of Michigan Consolidated, and with the resignations of the company president and of the board member chair of the audit committee coming immediately after the publication of the book article (Suchodolski 1981).

IIA Inc found itself unable to give any professional support to Arthur. This was partly due to the problem of achieving a judicious overview of the situation from the outside, but was also no doubt due to the ambivalence and mixed emotions to which whistleblowing gives rise. It is interesting to note that the procedural problem does not obstruct investigation of cases of alleged professional misconduct, and if whistleblowing were to be the cause of the complaint, then the IIA would be forced to investigate. Without wishing to make judgements on past history with the benefit of hindsight, this is certainly a nettle that needs to be grasped in the future, both as a practical concern, and as an inconsistency which results in a natural injustice for internal audit whistleblowers.

6.2 THE PENSION FUND FRAUD STORY

An internal audit of the pension fund of a financial institution revealed that legal requirements as to trust status were being broken. Monies were being removed 'temporarily' and placed in speculative investments by definition not permitted for pension funds to invest in. If a profit were made, the original capital was returned to the pension fund, but the speculative profit went to the company itself. The consequences to the pension fund of an overall loss had yet to be realized, although it was likely that some of the loss would be passed back to the fund. The head of internal audit reported to the board on this practice, but there was no willingness to change, indeed the board was behind it. The auditor pushed the matter hard from the inside, but without any success. He secured another similar position elsewhere, and then resigned in protest. This took place in the UK in 1980 when impractically ethical matters were still to be referred to the US Institute, and so this would weaken even further the low level of support that might have been expected had this individual blown the whistle and gone public.

6.3 THE STEPHEN F WELLS STORY

Stephen was working for a state agency funded by several sources, including a federal agency. The federal agency required a financial and compliance audit governed by the US General Accounting Office's Standards for Audit of Governmental Organizations, Programs, Activities, and Functions and the American Institute of Certified Public Accountants Codification of Statements on Auditing Standards. The section of the G.A.O. Standards which caused the problem, since it enjoined a legitimized whistleblowing, read as follows:

"Public officials are accountable both to other levels of government for the resources provided to carry out government programs and to the public. Consequently they should provide appropriate reports to those to whom they are accountable. Unless legal restrictions, ethical considerations, or other valid reasons prevent them from doing so, audit organizations should make audit findings available to the public and to other levels of government that have supplied (them with) resources."

It soon became clear to Stephen in his audit that there had been a failure to comply with federal regulations requiring accurate, current, and complete disclosure of project costs, federal reporting requirements, and federal property-management standards. The highlighting of significant internal control weaknesses placed continued support from federal funding in jeopardy. Pressure was applied by top management to modify substantially the audit report. Stephen and colleagues identified four major ethical issues:

- o Should internal auditors exhibit loyalty to the extent that an incomplete and misleading report be issued so that management can ensure continued funding?
- o Should internal auditors jeopardize the independence of the entire auditing function by allowing organizational impairments to limit the extent of disclosure?
- o Should internal auditors recognize as preeminent their obligation to the general public to disclose all relevant information, whether favourable to their agency or not, regarding public officials' stewardship of public funds?
- o Should internal auditors knowingly become involved in what would be improper, if not illegal, activities by failing to disclose information specifically required by the

federal agency?

To Stephen the way forward was clear: the report was issued, with minor changes only. Subsequently the agency head decided that internal audit was over-staffed, and Stephen was given redundancy notice. He promptly started labour grievance procedures. Following months of appeals, an independent arbitrator declared that the actions of the agency were improperly motivated, vindictive and without cause. Stephen was reinstated one year after his dismissal, and the senior management mentioned adversely in the audit report were no longer with the agency. A new governor and cabinet revitalized the way the agency was run. Stephen considered that there should be some specific avenues of direct, professional support and encouragement for internal auditors who uphold professional standards and ethics at the expense of their own personal welfare. Writing in the February 1985 edition of *The Internal Auditor*, he found that to date such professional support had been minimal.

6.4 ANDY ROBERTSON.

Andy considers that the IIA Position Statement raises more questions than it answers. Often the internal audit function is not headed by individuals with sufficient weight to raise matters of concern at a senior level. Alternatively internal audit may be merely cosmetic, an attempt to convince the outside world that due regard is being paid to proper practice. Then there are the common situations in which the internal auditor reports to the director of finance, and there may be a reluctance to report on areas under the control of the Director (Robertson 1991).

According to survey evidence, the situation of the internal auditor reporting to the director of finance remained the case in the UK in 56% of the cases, and stayed at this

figure over the ten years of 1976 to 1985. This was particularly true of local authorities and the public sector, and to a lesser extent private companies. What did change markedly over the ten year period was a shift from reporting to the chief accountant/controller, down from 28% to 7%, and an increase in reporting to the Chief executive or equivalent, up from 8% to 18% (Institute of Internal Auditors -United Kingdom 1985). In local government there is a legal requirement under sections 23 and 25 of the Local Government Finance Act 1982 for the internal audit department to report to "the responsible financial officer" (Vinten 1990b and 1991a). Recommendations to change the accountability to the Chief Executive have not been implemented (Widdicombe 1986), mainly due to the opposition of directors of finance.

Andy found himself in two situations during his career in which he believed he needed to blow the whistle. Both took place some ten years ago. In the first he was threatened by the members of a trades union when he discovered a widespread fraud. The union was so powerful that Andy's own manager, the finance director of the company, felt unable to change the practice. Andy was disinclined to drop the matter, but pressure was applied not to pursue the point. In the second case, Andy worked for a subsidiary company, and was asked by the holding company to audit their own purchase function. There he found three unethical practices, one of which involved the chairman. Parts of the audit report were suppressed because of the nature of the revelations.

Andy found that there was nobody to turn to for help and advice. In the second case, his boss suggested that he register the problem with his professional body. When he did, he was told that the IIA-UK was unable to help, since it had no policy of supporting members with this problem. This was prior to the IIA's Position Statement, and a response that Andy would not expect to receive today. Andy is among those who believe that the IIA should extend a helping hand to those who have obtained audit

findings that they cannot pass on to an 'appropriate' person. Indeed this is the sort of facility that he urges that members of the IIA have a right to expect. He suggests that there should be a Whistle-blowing Committee to which members could defer if they found untoward practices which they could not report internally. It is insufficient, he says, for the IIA to refer to the Standards, and suggest that there should by definition be no problem in a properly constituted function.

6.5 VIVIAN AMBROSE OF BCCI.

The Bank of Credit and Commerce International (BCCI) counts as the world's greatest banking scandal (Vinten 1991 and 1992j). This case brings out in a stark way the question of public responsibility versus loyalty to the organization. The role of internal audit was severely compromised by being denied access to those significant parts of the bank in which the fraud was most prevalent, as well as being denied independence and effective reporting channels. No evidence has so far surfaced that this ever became a matter of comment by the external auditor. Despite this, Mr. Vivian Ambrose of the UK regional inspection department decided that matters had gone unchecked for far too long at the bank, and he decided to blow the whistle. He wrote to Tony Benn M.P., on 14th June 1990 alleging widespread corruption and nepotism and "apparent incompetence by executives". Unfortunately the letter was lost in central government bureaucracy when Tony Benn forwarded it on 19th June to two relevant government departments. One was to John Major, then Chancellor of the Exchequer. Sue Wallis of the Ministerial Correspondence Unit of Her Majesty's Treasury, the Department controlled by the Chancellor, replied on 26th June "After consideration, it appears that the matters raised are the responsibility of the DEPARTMENT OF EMPLOYMENT, so I have sent your letter to Michael Howard's office with a request that a reply be sent to you direct." The reply from Michael Howard on 14th July indicated that redundancy decisions are

entirely at the commercial judgement of the employer, provided the requirements of statute are complied with. However, given the comments in Mr. Ambrose's letter about trading activities, Howard was copying the letter to Nicholas Ridley at the Department of Trade and Industry. No reply was ever forthcoming from either him or John Major.

In a letter to Gerald Vinten dated 16th February 1993, Tony Benn stated: " I never received a reply from the Chancellor and it was about a year later, when BCCI collapsed, that this earlier correspondence was released and the Government was forced to hold the Bingham Inquiry, to which I gave evidence." A further gloss on this story was the arrest by the Abu Dhabi authorities in early September 1991, not only of chief executive Zafar Iqbal and his predecessor Swaleh Naqvi, but also more than thirty others including the former head of internal audit and inspection, Selim Siddiqui. Mr. Ambrose made at least some attempt to minimise the economic disaster that was to ensue.

In a telephone interview with the writer on 16th September, 1991, Mr. Ambrose stated that he did not like the culture of BCCI right from the beginning, but the poor reputation of the bank in the banking community made it very difficult to find employment elsewhere. One was effectively locked in.

6.5.1 THE ACTORS IN THE DRAMA.

It provided temporary comfort to believe that the worst and long-lasting excesses of the U.S. Savings and Loans fiasco could not occur in the U.K. due to the innate superiority of the banking supervision system here. The illusion has now been shattered for ever by the case of the Bank of Credit and Commerce International, and the world's greatest ever banking scandal in financial terms. It is clear that the credit

was best never extended, and any commerce is now in shreds. The official complacency over this predictable and avoidable episode is amazing. Let us examine some of the actors.

First we have the Bank of England with its constant marginal interventions in the banking system, but an inability to cope in a timely fashion where a whole bank is rotten to the core. One is reminded of Ian Hay Davison's comment, when trying to sort out earlier and continuing problems at Lloyds Insurance, that not only the apples were rotten but also the barrel, and the Biblical parable of the mote and the beam. The owners and managers of the bank were well known within the City of London banking community and the City of London police Fraud squad not to be "fit and proper", yet BCCI was allowed to grow like a cancer up and down the country. If there was a tight-rope walk, then the Bank of England has fallen off.

There was no statutory regulation of such a vulnerable and important industry as banking until the 1979 Banking Act. This was a product of the secondary banking failure of the early 1970s, and the requirements of the first ever EEC Banking Directive. In the by now well-established tradition of crisis management, the 1987 Banking Act was a conditioned reflex to the Johnson Matthey Bank collapse. The trouble is that the two acts were evolutionary rather than revolutionary, and nostalgically inhabit the days when a minor facial gesture of disapproval from the Bank of England was sufficient to re-establish banking on the straight and narrow. Maverick and cavalier banks now in the City are not likely to be so influenced.

Secondly we have the Serious Fraud Office with its stock-in-trade justification for inaction that "No one has ever made a complaint", which is about as convincing as "The cheque is in the post". The criminal and fraudulent potential and actuality of the

BCCI was well-known to fraud squads even before the drug money laundering came to light, as revealed in the police interpretation of BCCI as Bank of Criminals and Conmen International. Police philosophy always emphasises prevention. Is the philosophy now to maximise the criminal damage?

Thirdly we have Ian Brindle of auditors Price Waterhouse trying to argue his way out of the imprecision of the external audit. Knowing full well of the irregularities from the start, Price Waterhouse chose to leave the reader of the accounts to blow up an obscure note to the accounts and realise the full significance. May I remind Mr Brindle of the judgement in re London and General Bank (1895) that:

"An auditor who gives shareholders means of information, instead of information in respect of a company's financial position, does so at his peril, and runs the very serious risk of being held, judicially, to have failed to discharge his duty".

In addition, there is a clear distinction between the role of the external auditor under the Companies Act 1985, and the reporting accountant under the Banking Act 1987. The second will operate out of the public eye direct to the Bank of England, but the first is a matter of public record. There is nothing in law or professional practice to suggest that Mr. Brindle should exercise personal judgement to conceal findings to serve some wider cause, and keep BCCI afloat a while longer. Presumably his firm's fee was larger to take account of the complexity and professional liability risks involved in this audit. It would be refreshing to find some clients that no self-respecting firm would be prepared to take on.

Fourthly, we have Dr Ronnie Lessem (1987, 1989, 1990) of the City University

Business School whose naivety knows no bounds in naming, in his various writings, this bank as the supreme example of 'metaphysical management' to which all organisations should aspire. Dr Lessem has provided a spurious and pernicious academic underpinning to this bank. If he were representative of management teachers, then the whole discipline would be brought into disrepute. He quotes approvingly that BCCI is a bridge between us as individuals and the totality of the phenomena of existence. Through BCCI we become part of all that is and all that happens. Even if you work in a small branch and the objectives seem limited, if you work with love and inspiration, you are serving humanity and fulfilling the call of history. Well, fraudulent companies, tell your story to Dr. Lessem, and he will be gullible enough to endow you with due divinity.

Finally we have the hapless investors. Of these the Western Isles Islands Council has lost a staggering £23 million, nearly half its annual budget, and a huge loss to the prosperity of an area that needs every penny from its coffers. One can have little sympathy for its Director of Finance, Donald MacLeod, who was prepared to perpetrate the cardinal error of putting all the eggs in one basket, and showed no appreciation of risk management strategy whatsoever. He was simply lending on for short-term gain. In a similar situation three years ago, Mr. MacLeod was criticized by the Commission for Local Authority Accounts in Scotland for borrowing from and lending to English local authorities. £20 million was involved, and the practice was denounced by the Commission as unlawful. The revelation that MacLeod's cousin, Iain MacLeod, is a director of the Council's main broker in Edinburgh, R.P.Martin, has occasioned comment.

One can but agree with the views of Tim Smith M.P., a chartered accountant, that there were sufficient journalistic and television coverage of B.C.C.I. to have alerted

institutional investors. It is a denial of professional responsibility to place reliance on the Bank of England's List of authorised banks when the Bank has constantly made it clear that all this means is an authorisation to take deposits at the date of the list. Nothing is implied about creditworthiness. The two northern banks, Chancery Securities and Eddington, which were on the list, but which failed earlier this year were adequate testimony to this. When the writer used to carry out financial vetting of contractors accounts, which were used by various professional officers as part of their decision-making process, it was always made clear that they should not place exclusive reliance on the appraisal, but should make their own independent enquiries, particularly from their own professional standpoint as architect, quantity surveyor, or whatever. Local government finance directors need to demonstrate more expertise in dealing with the world of banking after the previous disaster involving the interest rate swaps. Former Director of Finance at the London Borough of Hammersmith and Fulham, Clive Holtham, was criticised by the Committee of Inquiry for "most serious managerial failure", and after he left for a university professorship at the City University Business School, his promoted deputy had to ask what an interest rate swap was (London Borough of Hammersmith and Fulham 1991). Further reference to this is made in Chapter 11.

One can but sympathise with the less well-informed investor. B.C.C.I. did everything possible to give a spurious air of respectability to its activities. An example was its "green" affinity credit card and its charitable sponsorships. Many of its employees were taken in as well, and now face unemployment.

One intriguing *deus ex machina* explanation for this remarkable uncontrolled event is secret service involvement. Nobody will ever be able to cite the CIA or the like in their defence in an inquiry or court of law. Even so, in the U.S. the House Banking

Committee subpoenaed documents from the CIA as well as banking regulators and others in preparation for hearings which opened on September 11, 1991. If professionals care to prostrate their required independence to outside influence, such as the secret services, however well-intentioned and in the national interest they believe it to be, then they have to be prepared to take the consequences, such as action for negligence. Those who have been defrauded will be unimpressed at being pawns in this game. It would be pleasant to forecast that lessons would now be learned for the umpteenth time, and that the probability of a recurrence would be slight. History suggests otherwise.

6.5.2 THE INTERNAL AUDIT PERSPECTIVE.

B.C.C.I. possessed an internal audit department. It always used to intrigue the writer to wonder how an internal auditor could possibly survive in an organization that had so much to hide. The answer is beginning to emerge. Internal audit was denied access to the two key areas of the business from which the fraud could have been detected. Internal audit was apparently in place for the same reason as the green credit card: to provide bogus respectability. This does raise the question as to what the internal auditor should do in such cases. The Code of Ethics seems to simply pose a moral dilemma. On the one hand one has to exhibit loyalty to one's organization and not use information gained to its detriment. On the other hand one should not be a party to any illegal or improper activity. It is likely that the word "personally" is implied here. In other words, it does not deal with the situation of an entire organisation acting illegally or improperly, so long as the internal auditor is not part of it. This view is confirmed when one looks at the IIA Position Paper on Whistleblowing. This indicates what should happen in an ideal situation where there is true independence and adequate organizational status, and access to an audit committee comprised solely of non-

executive directors with a written charter setting out the duties and responsibilities of both this committee and of the internal audit department. There also need to be adequate resources and authority to carry out such responsibilities.

Plainly this was not the case in B.C.C.I. The Position Statement suggests going straight to the board of directors if all else fails. Again this would have been futile in the present case. The only remaining advice is to seek legal advice. This does not come cheap, and one really wonders what a lawyer can contribute that internal auditors could not work out for themselves. Mr. Vivian Ambrose of B.C.C.I.'s UK regional inspection department decided that matters had gone far enough, and so he wrote to Tony Benn M.P. on 14th June 1990. In the letter he alleged widespread corruption and nepotism, and referred to "apparent incompetence by executives". This letter was forwarded to government ministers, but through administrative error was never attended to. By October 1990, certain irregularities surfaced through other means, and the President and Chief Executive Officer resigned. Even then the full urgency of the situation was not recognised officially, and as the statutory wheels spun slowly, investors' money was being sacrificed as if in a game of roulette.

The IIA-UK had decided to seize upon the media opportunity presented by the BCCI case. The Blue Arrow case at the Old Bailey, the Central Criminal Court in the City of London, had also placed a spotlight on internal auditors. Hugh Hudson, Inspector at the National Westminster Bank, which owned Blue Arrow, stated in evidence that he had been let down by top management who had withheld vital information from him. It also transpired that Mr. Hudson's working papers and diaries made during the investigation had been thrown away. The IIA press release of 19th July 1991 spoke of the problem being the lack of someone of an independent mind for internal audit to report to. It was suggested that banks and all other quoted companies should have a

direct relationship with internal audit/inspection through an audit committee (Izzard 1991).

6.6 A LOCAL GOVERNMENT CHIEF INTERNAL AUDITOR.

The chief internal auditor worked for a small district council. He wrote to Professor Vinten after an article by Professor Vinten on whistleblowing had appeared in *Public Finance and Accountancy*, the journal of the Chartered Institute of Public Finance and Accountancy, on 13th March 1992. In a subsequent telephone interview, the auditor recounted how, as part of his internal audit plan, he had decided to conduct an audit of the manually recorded flexi-time system. As a result he discovered a number of abuses, the worst of which related to the finance department. The secretary to the director of finance was mis-recording her time at work to her advantage, and in monetary terms, the amount lost to the authority was around £1,000. The auditor considered that claiming to be present when absent was tantamount to stealing money, and so wanted action taken. Nothing did happen, but he was thanked for his work, and reassured that the point had been noted. He continued to press for tangible action to be taken. At this juncture he became unpopular in the eyes of the director, who started to find fault with his work, and to take a stern and authoritarian attitude. It was about this time that the auditor discovered through gossip channels that the secretary was the mistress of the director, and had also had relations with other chief officers and councillors. The auditor appealed to the chief executive, with whom the secretary had not had any relation. The chief executive seemed sympathetic, but reluctant to take on the director. It was clear that the culture of the authority was against such a challenge, and by having inadvertently settled on the cosy and possibly corrupt relations within the local authority, the chief internal auditor had become a *persona non grata*. The District Auditor had been contacted by the internal auditor, but reckoned there was little that he

could do. In discussion with Professor Vinten, the consensus was that the best way out was to seek alternative employment, hopefully on promotion, but certainly to avoid any loss of salary. However it was highly likely that such a move would entail inconvenience, and some monetary loss.

6.7 CHRISTOPHER URDA.

As reported in the London Evening Standard of 6th August 1992, Christopher was an internal auditor with the defence company, the Singer Corporation in the U.S. Mr. Urda, aged 35, helped prove that his company had cheated the Pentagon out of the equivalent of £38.5 million over eight years. As the newspaper reports in its own house style:

"Honesty really is the best policy as auditor Christopher Urda discovered after Uncle Sam awarded him £3.75 million for shopping crooked bosses ripping off the American government."

The judge made the award "under legislation known in America as the Whistleblower's Charter, which rewards citizens who report corporate dishonesty."

Mr. Urda stated, "I was just an ordinary guy, but it was the right thing to do."

CHAPTER 7. PARTICIPANT OBSERVATION, INTERNAL AUDITING AND WHISTLEBLOWING.

This chapter has a twin purpose. One is to explore participant observation and its place within the wider sphere of qualitative research as the most appropriate approach to researching whistleblowing. The second is to pursue the analogy of the internal auditor as participant observer with heightened realism of the organisation within which he or she operates, which will include encountering questionable practices. This then means that by the nature of the role, the internal auditor is likely to face more ethical dilemmas, and need to consider how best to resolve these. In extreme cases, the whistleblowing option may present itself for consideration.

The internal auditor is a type of participant observer, and this means that unless a three monkeys' philosophy is to be adopted of seeing nothing, hearing nothing and saying nothing, then whistleblowing in varying degrees may become part- and-parcel of such a role (Vinten 1987).

"Observation, however, is not a 'natural' gift but a highly skilled activity for which an extensive background knowledge and understanding is required, and also a capacity for original thinking and the ability to spot significant events. It is certainly not an easy option."

(Nisbet 1977,15).

Participant observation is a means of collecting evidence, and as the quotation suggests, it requires skill, knowledge and understanding. In its dominant social sciences meaning a researcher seeks to become a member of a group, organisation or event under study. It originates in ethnographic research, with researchers living in tribal cultures in faraway places. Organizations also may be regarded as tribes or a series of

tribes, with their various traditions, customs and cultures, (Deal and Kennedy 1988) and it is for this reason that the participant observation method commends itself. It could involve joining a snake-handling religious cult in West Virginia, walking with a protest march, or becoming a committee member. By being immersed in the events in progress, the researcher hopes to be in a position to obtain much more information and a greater depth of knowledge than would be possible from the outside looking in.

One of the most respected management classics, Alfred P Sloan's "My Years with General Motors" (Sloan 1986) is a participant observation study, and there is no noticeable criticism of such Chairman or Chief Executive accounts on the basis that they lack validity or make no useful contribution to management studies. The non-participant observer has been referred to as a spectral presence (Zimmerman and Wieder 1977). The participant observer will be an intimate part of the very sinews and tissues of the organization being researched. One researcher, who devoted three years to observing a grammar school as a teacher, described the experience as " the transfer of the whole person into an imaginative and emotional experience in which the fieldworker learned to live in and understand the new world." (Lacey 1976). Many more channels of communication will be open, and the observer will be able to be much more discriminating and selective in the messages that are received. Junkers suggests a continuum between participation and observation, with the two intermediate points of the participant as observer and the observer as participant (Junkers 1960):



In practice this can be confusing, and it may be more helpful to classify such research roles as: researcher as employee; research as explicit role; interrupted involvement; and observation alone. (Easterby-Smith, Thorpe and Lowe 1991, 96). The researcher as

employee is a role of total immersion, and to all intents and purposes the researcher is one with the employees alongside whom he or she will work. The research may be undertaken in an overt or covert way, but the covert mode brings forth ethical issues that need to be addressed. With research as the explicit role, the researcher negotiates in advance with the management and preferably the employees to spend an extended period of time in an organisation, and to observe, interview and participate as desired. This approach offers maximum flexibility without engendering the ethical problems that may reside in the previous approach. The advantages have been described as:

" The participant as observer not only makes no secret of his investigation: he makes it known that research is his overriding interest. He is there to observe. The participant observer is not tied down; he is free to move around as research interest beckons."
(Roy 1970)

With interrupted involvement the researcher is only present on a spasmodic basis, and so lacks a longitudinal perspective and is unlikely to be able to experience much direct participation. Through only attending with a specific purpose the serendipity factor is sacrificed. This is such a significant aspect of the research process, but one which many researchers seem embarrassed to admit to, since it does not fully fit into the rational model, and it appears that their research has benefitted from factors not of their own making. In fact serendipity is more likely to occur to lateral thinkers who maintain wide channels of openness in their research, and so stand a better chance to benefit from the unpredictable leads that are commonplace in research, and so it is a factor present in only the best quality research. Observation alone avoids interaction, and so has strictly limited use for research to those cases where observation and objective recording alone are required.

An approach in which participant observation is an integral feature is action research. The working definition of action research consists of a series of conditions as follows:

"If yours is a situation in which

- people reflect and improve (or develop) their *own* work and their *own* situations
- by tightly integrating their reflection and action
- and also making their experience public not only to other participants but also to other persons interested in and concerned about the work and the situation (i.e. their (public) theories and practices of the work and the situation)

and if yours is a situation in which there is increasingly

- data gathering by participants themselves (or with the help of others) in relation to their own questions
- participation (in problem-posing and in answering questions) in decision-making
- power-sharing and the relative suspension of hierarchical ways of working towards industrial democracy.
- collaboration among members of the group as a 'critical community'
- self-reflection, self-evaluation and self-management by autonomous and responsible persons and groups
- learning progressively (and publicly) by doing and making mistakes in a 'self-reflective spiral' of planning, acting, observing, reflecting, replanning, etc
- reflection which supports the idea of the '(self-) reflective practitioner'

then yours is a situation in which ACTION RESEARCH is occurring."

(Zuber-Skerritt 1992, page 14)

Action research is by definition a grounded method, rooted in the realities of the situation, with a deep-meaning orientation. Limerick (1991) describes it as a concept, a philosophy, an emancipatory process, and a methodology of learning, which for many

years was a trickle of protest at conventional research and learning methods, but has now become a major stream of thought, with the Berlin Walls of institutionalised education undergoing reluctant collapse.

It is true that the participant observer will not be able to maintain absolutely rigorous research procedures, although in action research and other forms of overt participant observation, there is plenty of scope for rigour. One cannot always break off in the middle of a conversation to take notes, or tape-record everything that happens. It will be necessary to be selective in what is reported. The danger of this is that the criteria for selection may not be obvious, and a third party may find it difficult to evaluate the appropriateness of the criteria used.

In practice this objection may be largely overcome. An observer who is knowledgeable about survey sampling methods will be able to compensate in part, and have in mind the need to achieve as representative and valid a sample as possible. Representativeness could apply to time periods, locations and individuals. There is an inevitable trade-off between the observer's privileged insider status, and the reduced level of statistical reliability that is achieved. It has been said that doing description is the fundamental act of data collection in a qualitative study. (Van Maanen 1983, 9). In any case the wider acceptability of the quantitative approach is built on shifting sands when one considers the problems of even formulating the questions that underlie survey research (Vinten 1988, 1988a, 1988b). This is compounded by the problem of the so-called interviewer effect (Bradburn, Sudman et al 1979, Dijkstra and van der Zouwen 1982), not to mention non-response and the difficulties of statistical application and interpretation (Vinten 1987). It is certainly true that:

"There are however better and worse maps and qualitative researchers seek to construct

good ones by moving closer to the territory they study in the physical sense as well as in the intellectual sense by minimising the use of such artificial distancing mechanisms as analytic labels, abstract hypotheses, and preformulated research strategies."

(Van Maanen, 1983, 10).

There are limitations in both the qualitative approach, in which participant observation plays a part, and the quantitative approach, which is the predominant model, particularly in academia where the promotions may belong, and it is a brave academic who is prepared to step outside this framework. Two such criticise the conventional and traditionally intolerant and insensitive gatekeeping that refuses to allow material such as theirs on green accounting into the public domain. They refer to the Gaia theory, according to which the earth in its constant self-regulation and corrective processes, creating the conditions which most favour its own stability and survival in the face of people-made pollution and the like, could well lead to the extinction of animal life, including human. In the light of potential catastrophe of such dimensions, they refer to the lethally archaic nature of the claims of the quantitative school:

" Gaia is clearly indifferent to LOGIT models and their ilk and it seems increasingly likely that, if we continue to place the generalisability of samples above the exploration of the condition of community and planet, we may well cause the fulfilment of the most pessimistic predictions."

(Gray and Laughlin 1991).

The experienced observer will not rely on participant observation alone, but will supplement by using other methods and approaches, including quantitative ones, and the secondary analysis of existing data. In this way different methods will be focussed on the same topic, and there should result a more comprehensive understanding of the matter being studied. There is a variety of observation study that is standardised and

systematised in a highly quantified way. This is called activity sampling, and it is used in management services and operations management. Instant observations are made at regular intervals of processes or individuals at work. The nature of the activity is recorded at each observation period, and given a sufficiency of measurements, it is possible to build up a picture of the frequency of each activity as a percentage of the total. This is the ultimate for quantification in observation studies, but it is localised and restricted in its significance, generally to one type of occupation at a time, and as a management aid it is only carried out at their behest, and is completely overt.

7.1 MORE OBJECTIONS TO PARTICIPANT OBSERVATION.

A further objection is that the mere presence of the observer may affect the actions of the observed. It is akin to the Hawthorne effect. It is like the unnatural impact a television camera makes on some people's behaviour. A local government committee once put on a prima donna performance for the writer when he sat at the press desk in order to take some notes during a press strike - it was assumed the strike must have suddenly ended. In physics it is the equivalent of the Heisenberg principle. According to this it is impossible to determine both the mass and velocity of a moving particle. The mere act of observation means that the measurement of one or other of mass or velocity will be distorted. A similar effect occurs when an anthropologist seeks to investigate a remote tribe. There is always the danger that the foreign body will interact with the tribe, thereby altering the nature of what is being observed. There is also another danger. Some tribes or groups have become so accustomed to being observed that they play the anthropologist at the same game. It is not unknown for them to invent stories, traditions or actions which an over-credulous outsider is delighted to take on board. Anthropological writings contain an element of this. There is an even higher likelihood where the anthropologist does not speak, or has not bothered to learn,

the language of the tribe. Ambiguity and misunderstanding will abound and the possibility of a plausible interpretation is remote indeed.

7.2 ENTER THE INTERNAL AUDITOR

Internal auditors will be able to draw parallels with their own situation. By definition they are part of their own organisation, and thus they are participant observers, whether they recognise it or not. The external auditor or management consultant, by way of contrast, are outside observers who enter the organisation for brief periods only. They do not participate in any meaningful sense. It is true that interaction does take place, and they will make some sort of impact on the organisation. It is reserved for the internal auditor to make complete use of the opportunities that full-blooded participant observation permits, as well as being aware of the limitations, and how to allow for these, or overcome them whenever possible.

Auditors have rarely been identified as participant observers, with perhaps only three exceptions (Fetterman 1986, Nich 1987, Vinten 1987). This is surprising, since the label can do much to enlighten the nature of the internal audit task. It is additionally surprising since internal audit is often regarded by academics and thoughtful practitioners as a social science, where the method of participant observation is accorded a position of respect. It can help to explain why internal audit independence and objectivity are impossible to achieve in any absolute sense. Nevertheless, like the need to be as representative as possible in one's sampling procedures, they remain as vital background factors to be complied with as far as is practically possible. The internal auditor can also identify with the need to identify with the 'tribe' without becoming completely absorbed into it. It is vital to learn the language of the 'tribe' especially when attempting an operational audit. If one has not learned the language of

the department being audited, then the auditor will be unable to distinguish sense from nonsense, and the auditee will find it easy to discredit the audit report.

7.3 COVERT PARTICIPANT OBSERVATION

So far we have considered open participant observation, where no secret is made of what is going on. There is full disclosure that the participant observer has an ulterior motive, however benign. In time the other members of the organisation probably forget about this peculiar role of one of their number, rather as the inclusion of the cuckoo in the nest achieves acceptance. They return to their normal behaviour, and the participant observer is then able to obtain a reliable picture. Another option is covert participant observation. Here the researcher conceals true identity and plays another role. True identity remains a secret to those being observed, as does the nature and even the existence of the research. The researcher 'goes native', plays undercover, and is identified more with the world of spying and counter espionage.

Jokes are often told about extremist political groups the membership of which consists entirely of police undercover agents; also the religious sects stocked up with sociologists of religion. The major advantage may be that the Heisenberg effect can be avoided, provided the covert participant observer takes a relative back seat. However, if the aim is to be privy to the top decision-making organs of the organisation, it will be necessary to adopt a higher profile in order to join the top councils, and then the danger of becoming an agent provocateur arises. Let us consider three examples (Bulmer 1982). Then we will discuss the dangers and opportunities, before suggesting the application to audit work, if any. Finally we will draw conclusions as to the use of the participant observation method to internal audit work.

EXAMPLE 1. THE PSYCHIATRIC HOSPITAL

A group of eight pseudopatients infiltrated a range of different types of American psychiatric hospital. They claimed to be hearing voices with unclear messages, but which appeared to say 'empty', 'hollow' and 'thud'. Apart from falsifying symptoms, name, vocation and employment, no other changes were made. Immediately upon admission the pseudopatients ceased simulating any abnormality and behaved as usual. Despite this all were labelled as schizophrenic, showered with tablets (which they avoided swallowing, as apparently did many real patients), and treated as being mentally ill. The fact that the normal are not detectably sane threw up many questions as to how discriminating psychiatric diagnosis is. The effectiveness of such institutions is also in doubt. How many 'patients', sane outside the psychiatric hospital, become 'insane' within it, simply in reaction to their bizarre setting?

EXAMPLE 2. HOMOSEXUALITY

Laud Humphreys posed as a watchqueen in male public restrooms (toilets) in order to research male homosexual behaviour. He recorded the vehicle, state, and licence number, and used a friendly policeman to trace their addresses. Heavily disguised, and after a lapse of time, he visited the men in their homes, claiming to be conducting a social health survey. Nobody recognised him, and he was able to collect considerable background information. As usual in these surveys, strict anonymity was preserved.

EXAMPLE 3. THE BRITISH POLICE

Simon Holdaway was a police sergeant in a busy, urban police sub-division. He considered that covert participant observation was the only viable research method that would reveal insights into the true workings of the police force. He catalogued many

incidents, and found that policing was a sporadic, essentially actionless job, but that the lower ranks regarded it as highly action-oriented and had to construct a world of action through technology and other devices. He also cut through the rhetoric of police professionalism to reveal ineffective management throughout the ranks. Holdaway eventually resigned from the police to become a lecturer, and to write up his research.

7.4 DANGERS AND OPPORTUNITIES

The following dangers may be suggested:

1. It is invasion of privacy. The trouble is to define what is public and private. There is no absolute right to privacy. Much depends on the circumstances, and similar behaviour may be both public and private according to time of day and place.
2. It can jeopardise future research and give rise to a poor image. This is probably true of any type of research. One never quite knows the outcome, and some vested interest is always liable to come forward and attempt to block future research, and try to undermine research itself as a defense mechanism.
3. It places a burden on the investigator. Any investigation can do this, and some are more suited to it than others. Certainly care needs to be exercised in selecting investigators, with full briefings, support and debriefings being provided.
4. It is disruptive both on the setting and on those observed. This again can potentially apply to any form of investigation. It may be desirable at the end to question research subjects as to the degree of disruption they felt.

5. Deception is never justified. This standpoint depends upon a consensus view of society. However it may sometimes be more appropriate to adopt a conflict model. If subjects employ lies, deceit, deception, fraud and blackmail the investigator may feel justified in going covert in order to expose them. Jack D Douglas has suggested that the model is best provided by "spies, counterspies, police, detectives, prosecutors, judges, psychiatrists, tax collectors, probation officers investigative journalists" and others. He does not mention auditors, but it seems a fair assumption that these would qualify for inclusion in such a list. Douglas believes that his view accords with the nature of American society (Douglas 1976).

6. It violates the principle of informed consent. This doctrine goes back to the 1949 Nuremberg Code. It was formulated at the trials of those charged with carrying out unethical medical experiments in Nazi Germany. Voluntary consent, based on free power of choice and sufficient knowledge, is seen as essential (Diener and Crandall 1978).

7.5 OPPORTUNITIES.

The opportunities are that the method permits a fuller and more accurate insight into situations than would otherwise be possible. Indeed either overt or covert participant observation may be the only way to access certain types of workplace behaviour, particularly those organizational processes otherwise 'sealed off' from the outer world (Beynon 1988, 29). An instructive example took place in the case of the merger of the two US banks (Buono and Bowditch, 1989). Whistleblowing is a form of participant observation that does not start as such, but is triggered by the illegal or unethical acts of the organisation. The potential whistleblower is then motivated to seek evidence in a more systematic fashion, and thereby joins the research community, although they are

more likely to regard themselves as fighting a cause (Vinten 1992 and 1992f).

Participant observation may be the only practical way to achieve an awareness of common workplace practices, which are nevertheless easily concealed from external observation, including that of the external auditor and management consultant. Gerald Mars has shown this in his analysis of occupational crime (Mars 1982).

Another study, which took six years to complete, with 10,000 hours of disguised participant observation, collected 451 cases of unconventional practices at work in the entertainment industry (Analoui and Kakabadse 1992). It found unconventional behaviour to be an undeniable aspect of workplace activities, and this leads to inefficiencies in many organizations. The research led to the suggestion that there may be three dimensions to such activities. These are (i) the forms they may take (pilferage, rule-breaking, non-cooperation, destructive practices, disruptive practices, and misuse of facilities), (ii) the overt and covert styles in both individual and collective forms as the expression, and (iii) the motives for their occurrence and the meanings attributed to them. This classification formed the basis for an effective development programme that would assist managers to deal with such behaviour. Both motivation and control were found to be of equal importance, and specific recommendations were made.

This practical and consequential research would have been impossible to conduct effectively in any other way. Employees would never trust an investigator for fear of results falling into management hands. Additionally managers themselves were occasionally indulging in unconventional practices, sometimes in collusion with employees. The researcher identified common difficulties with this type of research: immersion, empathy, personal bias, taking the reality under investigation for granted, inaccessibility to certain information, and the extended time it can take. There was a lack

of structure and predictability as to the time needed to complete. This is because, according to Glaser and Strauss' grounded theory:

" The tempo of the research is difficult to know beforehand because it is contingent on the tempo of the emerging theory." (Glaser and Strauss, 74).

One is reminded of the distinction between strategies deliberate and emergent (Mintzberg and Waters 1985). The researcher also needs to maintain a position within the field of enquiry until the pieces of the jigsaw begin to come together, and hypotheses and theories, wherever possible emerge. Constant threats to such research are being dismissed or having one's cover blown before the research is completed. There is also the issue of when to withdraw. Premature withdrawal will not do justice to the richness of the data. Delayed withdrawal will represent a waste of energy and an opportunity cost. There are certainly risks in this type of research - are there not in most things? - and careful planning and supervision is crucial:

" Careful planning and piloting are essential, and it takes practice to get the most out of this technique. However, once mastered, it is a technique that can often reveal characteristics of groups or individuals which would have been impossible to discover by other means." (Bell 1987).

All research is a trade-off of benefits and disbenefits. The public interest argument is paramount. Do the insights gained justify the possible disbenefits? In the three examples given it would seem that they do, although the homosexual example is the most dubious. Only in retrospect do the results seem useful. The other two seem very much in the public interest, and would otherwise not have been possible.

7.6 QUALITATIVE RESEARCH AS A MODEL.

Table 1 was based on an unpublished brainstorming session on the usefulness of qualitative research carried out at Social and Community Planning Research, and here modified for use in internal auditing. Participant observation forms a part of qualitative research, and it shows the countless situations in which the qualitative approach may be appropriate.

WHY QUALITATIVE RESEARCH IN INTERNAL AUDITING?

1. To find out in auditees' own words the reasons for an occurrence.
2. To allow the auditees' perspective to emerge.
3. Permits the extent of the auditees' knowledge and understanding to be discovered.
4. For audits complex in definition and scope.
5. To explore organizational structure and feedback mechanisms.
6. To assess range and variety of experience so that the most significant auditees are interviewed.
7. To construct an audit report based on auditees' own viewpoints.
8. To allow auditees to introspect on reasons for carrying out an operation or procedure.

9. To find key auditee phrases which sum up attitudes or experiences.
10. To seek out extra insight into auditee and auditor experiences.
11. To find out the motives, even emotions, behind a decision or situation.
12. To avoid making an auditee feel inhibited or curtailed.
13. To give auditees time to think and develop their responses.
14. To explore in-depth attitudes to comments made in an audit report.
15. To allow auditees to talk freely.
16. To explore the appeal, strengths and weaknesses of a new management philosophy.
17. To gain an understanding of informal processes.
18. To discover how responsive internal audit or other service departments are to user needs.
19. To investigate apparent contradictions between attitudes and behaviour.
20. To discuss the variations of auditee performance from benchmarking measures.
21. To maximise the creative interaction between auditor and auditee.

- 22. To explore auditee rationalizations of audit findings.
- 23. Cost effective and potentially speedy method.
- 24. To delve into sensitive issues.
- 25. As a preliminary to a full audit survey.

TABLE 1: A ROLE FOR QUALITATIVE RESEARCH

Table 2 illustrates the phases of research for which qualitative research is best suited, as well as where it may be used as a preliminary or main research method. Suggestions are also made as to methods of validation.

QUALITATIVE RESEARCH		
PHASES OF RESEARCH	AS A PRIME (OR SOLE) APPROACH	TO COMPLEMENT QUANTITATIVE RESEARCH
PRELIMINARY	CONCEPT FORMULATION	CONCEPT CLARIFICATION
	GENERATION OF HYPOTHESIS/THEORY	INSTRUMENT DESIGN PILOTING
PRINCIPAL	TOPIC IS: E.G. SENSITIVE COMPLICATED UNMEASURABLE	INTERPRETATION ILLUMINATION ILLUSTRATION QUALIFICATION

	CONCERNED WITH INTERACTION	
	CONCERNED WITH PROCESS	PROCESS EVALUATION
	RESEARCH SUBJECTS ARE:	
	E.G. INARTICULATE	
	'PRECIOUS'	
	FEW IN NUMBER	
	RESEARCH OBJECTIVE IS:	
	E.G. BRAINSTORMING	
	ACTION-ORIENTATED	
<hr/>		
VALIDATION	BETWEEN TECHNIQUE TRIANGULATION	BETWEEN METHOD TRIANGULATION
	TESTING 'CONSUMER'	
	RESPONSE TO POLICY	
	RECOMMENDATIONS	
<hr/>		

SOURCE: WALKER, 1985

TABLE 2 : SUITABILITY OF QUALITATIVE RESEACH FOR PHASES OF RESEARCH PROCESS.

7.7 THE INTERNAL AUDIT APPLICATION

It is arguably only in extreme cases that the internal auditor will wish to employ covert investigative techniques. The impetus will be exactly those situations outlined by Douglas. Where fraud, deceit and corruption are being practised the auditor, however regrettably, may need to respond covertly. The internal auditor, except in a very large organisation, will be limited in this response since he or she will already be known.

However with rapid staff turnover, opportunities present themselves, as does a company with separate headquarters and divisionalised audit teams. With the short-stay syndrome in internal audit, whereby individuals enter and exit throughout or during their career, an element of covert participant observation takes place naturally. This is slightly different, since there may be no original intention, but when a member of staff from elsewhere is transferred into audit, use may be made of insights already gained. It may pinpoint where to look and what the problems are. Professional ethics do suggest the individual with a previous involvement should not audit until a reasonable time has elapsed.

Covert participant observation may not just be limited to punitive areas such as fraud investigation. It may be of use in management audit. The studies on psychiatric hospitals and the police throw up many issues regarding efficiency and effectiveness. It is debatable whether the internal auditor should be directly involved in such work, but the work having been done, there is much the management auditor would wish to fasten on to. Auditors on first entering a building may be unknown, and for a short time be in a covert situation. It is telling to stand in a queue with the public to see how they are treated, just as observing the behaviour of reception staff and switchboard operators may subsequently become part of an audit of the organisation's communications systems. Auditors, posing as the public, sometimes test out the strength of the organisation's security system. These initiatives seem to be more constructive than damaging, although much will depend upon how they are treated.

7.8 CONCLUSIONS

Internal auditors, by the nature of their work, are natural participant observers in their organisations. They therefore need to consider the strengths and weaknesses this role places them in, and much can be gained from the literature of the social sciences. The notion of informed consent, not previously brought into the audit discussion, also deserves careful thought. How far and in what circumstances should informed consent be sought? If auditee cooperation is to be maximised, or a cooperative partnership concept developed, informed consent provides a suitable basis.

The use of covert participant observation, except in its strictly limited and benign form, would seem to be counterproductive, unless there are legal infractions that need investigating. It may be preferable to take this responsibility away from internal audit, and create a special fraud and security section. As part of their desk research auditors may well wish to make use of the fruits of others' covert participant observation studies.

It is through participant observation that greater insights are to be gained into the real workings of organisations and those that work within them. Internal auditors are naturally participant observers, with access to a wider range of an organisation's workings than applies to almost all other staff. This means that there are more opportunities of discovering unethical or even illegal behaviour that might otherwise remain concealed, and this then raises the dilemma, if the issue is unresolved, of whether a participant observer should blow the whistle.

CHAPTER 8. THE SOCIAL AUDIT

In this chapter a variety of audit is examined which, by its very nature, delves into matters of social and ethical concern. Such delving may have been inspired by the revelations of a whistleblower, by external pressure group activity, or be internally generated. If the reaction to such audits is mishandled, there is a high probability that whistleblowing may result.

It is difficult to envisage an unsocial auditor. Audit is intrinsically a social activity. A Robinson Crusoe auditor, working in splendid isolation, will be of little use within an organisation, and will be particularly hard pressed to have recommendations implemented. The successful auditor is an up-front individual. Refusing to hide behind a mystical smoke-screen of professional jargon and arcane techniques, the auditor aims for maximum communication. Contacts are especially fostered on an informal basis, since this is where organisations ply much of their business. By being social the auditor displays the professional wares, the stock-in-trade, for all to see. This means that the auditor's vulnerability is increased. Achievement will bring forth praise; mistakes will inspire criticism. Even so, this is a much healthier environment in which to flourish than one in which the auditor is not even noticed, even if more risk is involved. The social auditor maintains a shop-window within the organisation, and actively encourages social contact. This ideal-type of auditor is likely to be more aware of the external environment, and in an organisation that decides to try to cover up, this could lead to whistleblowing situations.

There is, however, another species of audit that bears the name 'social audit', and which has as its objective to keep organisations on their toes, and in the event of their default, to whistleblow on them. There is a connecting strand with our previous

discussion. Just as the social auditor is the only viable form of auditor, so the social organisation (company, central or local government department, voluntary body or whatever) is the only viable form of organisation. Any organisation that wishes to survive and flourish needs to be in constant and dynamic interaction with the wider environment. Customers, investors, employees and the community at large (which always includes potential customers, investors and employees) all need to be considered. An organisation that constantly creates a negative social impact may find the withdrawal of public approval and of the market for its product or services. This view, which may seem to be little more than a conventional wisdom, does not go unchallenged. The American monetarist economist, Professor Milton Friedman, has stated uncompromisingly that social responsibility is

"a fundamentally subversive doctrine....few trends could so thoroughly undermine the very foundations of our free society as the acceptance by corporate officials of a social responsibility other than to make as much for their stockholders as possible".

To Friedman the only social responsibility of a corporation is to make a profit - the business of business, and the return to investors is paramount. Anything beyond this represents a dereliction of duty, a sick perversion that ultimately will undermine the stability of the economy and society as a whole (Friedman 1962). An even more extreme version of Friedman is represented in Sternberg (1994) where it is argued that Friedman was too modest in characterising the use of a company's resources for non-profitable purposes as unauthorised taxation. Sternberg regards such activity as " theft : an unjustified appropriation of the owners' property - as surely as if they had dipped their hands into the till."

8.1 THE COMMUNIST CONTRIBUTION.

A strongly contrasting view at the other end of the spectrum was represented by Communism. Here the means of production and distribution were viewed as servants of the State and subservient to the wishes of the people, as expressed by those politicians in control at any particular point in time. All organizations were regarded as quintessentially social, just as all audit may be regarded as social. This becomes apparent when we examine the names of communist audit organs. Yugoslavia established a 'Social Accounting Service' in 1959 with the purpose of watching over the legality of the disbursement of (public) social funds through pre-audits, in loco and post-audits. East Germany had the 'Workers' and Peasants' Inspection', with the 'State and People's Control' in Bulgaria, and 'People's Control' in Czechoslovakia, Hungary, and the former Union of Soviet Socialist Republics, the last country providing the blueprint for the other developments.

The People's Control in the U.S.S.R. was an expansive network, operating under the direct leadership of the Central Committee of the communist party and of the Council of Ministers. It stretched down through all the different levels and geographical divisions using a mixture of 'professionals' and lay people, until at the lowest level (villages, offices, institutes, enterprises) the 'people's element' took over completely with 600,000 control groups, about as many control posts, and the participation of more than 9.5 million people's controllers. There was a gargantuan number of units to survey, with over 30,000 industrial enterprises and unions, 24,500 construction and assembly enterprises, 20,000 state farms, 90,000 communications units, 265,000 service organisations, 215,000 shops and 75 per cent of city dwellings. There were additionally hundreds of thousands of units concerned with agriculture, consumption and housing cooperatives. Characteristically audits were of on-going activities, with ex

post facto financial audits playing a smaller role, and being undertaken by the internal audit divisions of the various ministries, notably finance. Scope was wide and includes economic, financial and administrative - organizational activities, and considers legality, economy, efficiency and expediency. This meant that the soviet view of the 3 E's (Economy, Efficiency and Effectiveness) was modified by the substitution of expediency for effectiveness. This expediency might include cases where political expediency was used as a criterion. Political audit was the same as the people's audit which was the same as social audit. Whistleblowing was encouraged under this system, but how well it would be received, depended on the identity of the miscreant, and whether this person continued out of favour. The informer could be rewarded with an upgrading in the housing market, but could suffer recrimination following the rehabilitation of the 'whistleblowee' (Szawlowski 1981).

8.2 SOCIAL AUDIT IN A MIXED ECONOMY

Most societies, including the one which bred Friedman and those that play variations on the Marxist theme, do not achieve anything like the purity of the doctrine that may be attributed to them. The United States of America has so many countervailing tendencies, checks and balances that Friedman comes under constant challenge. Similarly a country such as the People's Republic of China is undergoing cultural and economic change that the purity is diluted. Realistically what we are seeking is the middle ground - a social audit suitable for the mixed economy which predominates throughout the world. It is a compromise between the no social audit of Friedman and the total social audit of Marxism.

8.3 A DEFINITION

It was in recognition of this much needed compromise that Gerald Vinten attempted a definition which hopes to extrapolate between the two opposing polarities of Friedman and Marxism (Vinten 1985 and 1990c). The definition is

'A review to ensure that an organisation gives due consideration to its wider and social responsibilities to those both directly and indirectly affected by its decisions, and that a balance is achieved in its corporate planning between these aspects and the more traditional business-related objectives'

Since in practice most of the better-known and publicized social audits have been carried out by external 'pressure groups' of one kind or another, some have questioned use of the word audit. John Humble, who uses the term 'social responsibility audit' comments on the drawback of using the term audit (Humble 1973). It can be seen as an entirely quantitative measurement, such as the financial audit, and this the social audit is never likely to be. Our present knowledge in this area does not permit us to define precisely all the problems, let alone know how to measure all the outputs. Nevertheless, John Humble argues, 'audit' is used in this context because of its rich associations with objectivity; comprehensive analysis; regularity, reporting and so on. He concedes that 'social responsibility audit' may not be the best or final label, but that it does not matter. The concern is with a practical process, not a label, which can always be changed. John Humble believes, as I do, that the social audit should be primarily internally generated. This does not rule out that someone will take it upon themselves to undertake an external social audit. It would mean that such an external social audit should not cause quite the same trauma if the organisation had a responsiveness engendered already through its existing internal processes, which

should generally remove the cause of whistleblowing. We examine the external approach first.

8.4 EXTERNAL SOCIAL AUDIT

There is no statutory requirement for an external social audit anywhere, unless we play with words and consider all Communist audit to be social. Even here one could argue that there is no concept of 'externality' since the State, or the people, embrace everything. External social audit therefore has no particular linkages with accountancy.

For an organisation with no internal social audit capacity, the external social audit is likely to come as a shock. In extreme circumstances, such as Union Carbide, the external social audit, in this case conducted via American Congressional hearings and by the Indian government, reaches virtually terminal proportions for the organisation, which is forced to close down an entire plant. Indeed the viability of the whole company is in jeopardy. This company, in a deliberate and calculated fashion, chose to ignore its social responsibilities. The profit motive reigned supreme. The outcome was mass tragedy on an unprecedented scale, with world public censure, and an ongoing external social audit interest through the mass media that never lets up. The definition of an external social audit is similar to that for internal, but begins:

"A review to ensure that an organisation is forced to give due consideration...."

8.5 NOT THE 39 BUT THE 5 STEPS

Esther Peterson, who worked as consumer advisor to Presidents Johnson, Kennedy and Carter, and was also consumer advocate with Giant Foods Incorporated, has

suggested that business reaction to such external pressure progresses through five distinct phases (Peterson 1974), which I have adapted to suit the present case:

Step 1. Deny everything. To accept the legitimacy of such an external social audit involves a philosophical and emotional wrench.

Step 2. If denying fails to work, try to discredit whoever made the charge. An organisation is not prepared to consider the sincerity of external review, and so has to question the motives involved

Step 3. When no action results, and legal or legislative action is pursued, oppose everything. Organisations are unprepared to see that reasonable and timely voluntary reform is the best deterrent to potentially restrictive legislation.

Step 4. If legislation is passed, or regulations written, try to 'defame' anything that is enacted by working against implementation or getting an opponent of the law appointed to administer it.

Step 5. Do something about the problems. After repeated frustration, the awakening comes and business realises that service is its first obligation if it is to grow and prosper. The best way to cope with the problems is to face the allegations seriously, give a fair hearing, and make a serious effort to do something constructive to correct the shortcoming.

In lieu of a Step 5 response it is possible that legislation will result. Organisations generally prefer non-legislative means as being more flexible and less costly. However the State, bearing in mind public opinion or in advance of public opinion, may decide

that the pace of change is too slow. Hence we have legislation on Health and Safety, Equal Opportunities, Race Relations and the like, as well as a wide range of government inspectorates ranging through plant health and seeds, river pollution, diving, agricultural wages, railways and anatomy (Rhodes 1981). As an example, Genture Restaurants Ltd. of Birmingham no doubt wished subsequently that they had taken race relations more seriously, and taken their own initiative to formulate policy (Commission for Racial Equality 1978). Found guilty of various contraventions, including a refusal to admit Chinese students, the company was put to considerable expense over the investigation, and then compelled to formulate and publicise a written policy statement, and to submit to a periodic inspection by the Commission for compliance.

A stipulation of the Fair Trading Act 1973 was the duty of the Director General of Fair Trading to :

"encourage relevant trade associations to prepare, and disseminate to their members, codes of practice for guidance in safeguarding and promoting the interests of consumers in the United Kingdom".

Such codes have had a measure of success, but where there has been a fragmented trade dealing with a complex product, such as the motor car, success has been strictly limited. The Advertising Standards Authority may be considered a more telling success story in self-regulation. Another example is the Insurance Ombudsman Bureau, which started work in March 1981. This was a spontaneously generated development among some of the leading insurance companies, and applied only to these companies, which had to agree to accept awards of up to £100,000 without dispute. There had been some preceding public and official concern about the insurance industry, and so this was a

reasonable Step 5 response.

External social audits have been undertaken by a variety of organisations. Some of these are specialist pressure groups, such as War on Want investigating 'the baby killer scandal', the promotion and sale of powdered baby milks in the Third World, and naming the offending companies (Chetley 1979). The United Kingdom Alliance for Temperance Reform has published many reports on the alcohol industry and alcohol abuse. In response a trade association, the Brewers' Society, has published a list of the socially oriented medical research and educational campaigns that it funds (Brewers' Society 1982). Similarly the Tobacco Industry has been forced to respond to widespread criticism (British American Tobacco 1992, 1992a, 1992b, 1992c) as has the pharmaceutical industry (Braithwaite 1984). The Soil Association has considered chemical additives in food (Soil Association 1984).

8.6 SOCIAL AUDIT LIMITED

More generalised pressure groups include Social Audit Limited and the National Consumer Council. Social Audit is an independent, non profit making body concerned with improving government and corporate responsiveness to the public generally. Its surveys are extremely wide-ranging. In the public sector it investigated the system of parliamentary questions and their effectiveness (Medawar 1980). It also considered mental hospital nurses and the responses open to them if witnessing patient abuse (Beardshaw 1981). In the private sector it provided a comprehensive analysis of the social audit of significant aspects of a business, including design, manufacture and quality control, packaging and labelling, marketing and competition, after sales and the end product (Medawar 1978).

Its most thoroughgoing and all-embracing social audit was on the Avon Rubber Company Ltd (Social Audit Ltd 1976). This report was the first ever of its kind. It was carried out with grants from the Social Science Research Council and Joseph Rowntree Charitable Trust, and was a unique attempt to describe the major social costs and benefits of a company's business operation. A remarkable degree of cooperation was achieved with both the company's management and trade unions. In addition access was attained on normally secret government files on the company. The comprehensiveness of the report can be seen in that Avon's activities are reported under some fifty different headings, containing information that most companies treat as strictly confidential. These ranged over the business (organisation, management style, resource use, investment, financial accounting), employees (pay and fringe benefits, job security, participation and alienation, health and safety, training, women, race relations, and employment of disabled), consumer products and services (types of wheel and tyre, inflatables, advertising and public relations, government and military contracting) and the environment and local community (air, river and waste pollution, energy use and conservation, external noise, and community involvement and donations). This social audit is of considerable interest to internal auditors in its scope, coverage and methodology. It ranks with those other two pioneering initiatives - the Confederation of British Industry study on Cheshire County Council (Confederation of British Industry 1984) and the Audit Commission study on Basildon District Council (Audit Commission 1984). All three reports represent what Brink and Witt refer to as 'integrated operational audit' (Brink and Witt 1982). By this they refer to a composite audit, dealing with the complete span of operational activities of a self-sufficient company or other broadly based operational unit. My own preferred term for this is 'corporate audit'.

8.7 NATIONAL CONSUMER COUNCIL

The National Consumer Council has tastes as equally catholic as those of Social Audit Limited. It undertook a large survey of the social security system, thus providing an external social audit for the Department of Health and Social Security (National Consumer Council 1984). In Scotland a study was completed on the public right of admission to local authority meetings and on access to information (Scottish Consumer Council 1985). Their work on consumer performance indicators. was described by the then Director of the Council as being an area where new ground had been trodden (Vinten 1985a) and is set out in an article (Mitchell 1983). This was then extended to consider selected areas within local government, such as housing repairs, street cleansing, lighting and the education of under 5s.

There are warnings to be sounded as to the extent to which an organisation should make use of these external social audits. The social audits we have examined have been performed by highly reputable bodies with a sound research capability. This may not always be the case. There are three points to bear in mind:

1. It is important to consider the standing, legitimacy and representativeness of the external social auditor. It may be that such audits should be ahead of public social opinion. On the other hand it is necessary to ensure that minority opinions neither exercise disproportionate influence, nor are completely overlooked.
2. The social audits should represent opinions that are relatively permanent. If a situation or opinion is fluid, then it is unrealistic to expect organisations to make major policy adjustments. If they did it would maximise short term expediency at the expense of the longer term trend.

3. The social audit must involve an informed consideration of the possible range of alternatives for coping with the situation.

8.8 INTERNAL SOCIAL AUDIT

The case for an organisation to perform its own internal social audit is compelling. Otherwise it becomes a creature of fortune, responding to external stimuli, rather than taking the steering wheel. Crisis social management comes expensive. Third party liability has become an established legal principle, particularly in the U.S.A. where it has a longer antiquity and has developed at a quicker pace. We have already discussed that however reluctant an organisation is to enter these waters, the law has already compelled some interest to be taken in these areas. Beyond this basic and rudimentary enforced social audit concern, the extent of internal social audit depends upon the organisation's attitude to business ethics and society, as well as to its more immediate stakeholders. The smaller organisation could only be expected to have a limited involvement as compared with medium and large size companies. This accords with their comparative social and economic influence. Some local communities rely almost exclusively on one company. In other areas the local authority has all the social responsibilities of being the major employer. It also accords with thinking on financial audit which places the small company in a special category.

8.9 MOTIVATION

The motivation for entering into the discretionary waters is variable. It is instructive to reapply the categories that Richard Titmuss first formulated with reference to blood donation (Titmuss 1973). He distinguishes eight types of donor ranging along a continuum from the paid donor at the one end to the voluntary community donor at the

other. The former is involved in a mechanical, impersonal transaction conducted on a private market basis. The price will depend upon supply and demand factors. Some refer to this as the mercenary donor. In organisational terms any expenditure on social responsibility items will be strictly confined to action without which profitability will be jeopardised. There will be no element of philanthropy, and the expenditure must have a business justification. The opposite polarity is of the voluntary community donor. This is the closest approximation to the idea of a 'free human gift'. Such donations are characterised by the absence of tangible immediate rewards in monetary or non-monetary forms; the absence of penalties, financial or otherwise; and the knowledge among donors that they give to unnamed strangers without distinction of age, sex, medical condition, income, class, religion or ethnic group. In organisation terms this would involve anonymous donations to charities, as opposed to the 'tied-aid' often characteristic of government overseas aid. The organisation would not seek publicity, but would act purely for the sake of action.

This pure form is rarely found in practice. Few donors are motivated by complete, disinterested, spontaneous altruism. Most donors are in the intermediate categories. Pilkington, the glass company, is an example of a family firm, steeped in philanthropy, which was forced to move away from family charity to the less 'pure' philanthropy based upon business rationale, when it went public (Sorell 1989). The question is does this lack of purity matter? If one insisted on Titmuss' Type H (voluntary community donor) then there would be little social responsibility activity to chalk up. It may be preferable not to question motivation beyond a certain point, but simply to accept the activity with gratitude. After all most organisations will seek to exploit their examples of social responsibility to a greater or lesser extent.

8.10 INTEGRATED INTERNAL SOCIAL AUDIT

A social audit conducted in splendid isolation on an ad hoc basis will be of limited use. Both the social responsibility activities and the social audit need to be integrated with the other activities of the organisation. A board member or senior manager needs to adopt a coordination role, and activities should form part of the corporate plans. The social audit should therefore arise out of and be fed into the strategic and operational planning process. Systematically and organisation-wide, the existing policies and practices should be examined, and strengths and weaknesses highlighted. An improvement plan, short and long term, should be prepared and this will be balanced with other objectives and suitably integrated with them. This was behind the wording of my definition. Progress and implementation would be monitored periodically, and any modifications agreed and noted. This is like any planning cycle, and social responsibility matters simply become a natural and indispensable element in this.

There is no doubting the global influence of the quality movement. It is therefore persuasive to note the role that ethical considerations play in various quality award schemes, and this furthers the argument towards an integrated approach. Take the 1994 European Quality Award, which has a section on impact on society which counts for 6% of the weighting, although ethical considerations appear elsewhere and so the overall weighting is much greater. The section reads :

"What the perception of your company is amongst the community at large. This includes views of the company's approach to quality of life, the environment and to the preservation of global resources. Evidence is needed of the company's success in satisfying the needs and expectations of the community at large. This should be expressed as : a ~ your company's actual performance

b~ your company's own targets.

and wherever possible

c~ the performance of competitors.

d~ the performance of "best in class" organisations."

8.11 THE INTERNAL AUDIT ROLE

Marketing involves fulfilling the wants of customers, or of social need, ensuring the supply of goods or services, of the right quality at a reasonable price or cost, at an appropriate time. Repeat orders are vital, and organisations which flaunts the profit motive at the expense of other considerations will achieve a poor image.

If social responsibility affairs are represented in corporate plans and statements then there is something to audit. If they are not, then the rudimentary legal framework for social responsibility may still be audited, and compliance with this legislation will form the topic for the audit. Failing this the auditor may be concerned with expediency, and the mix and balance within the organisation. The auditor may draw comparisons with competitors, and the extent to which market position is being sacrificed by a too narrow focus on the profit motive alone. As already stated, the auditor is on shifting sands, and has left the cosy security of the financial audit. Nevertheless auditors who can make a contribution here are head and shoulders above their peers, and have really established their worth to the organisation. If only an internal auditor had performed a social audit on Union Carbide! One can therefore posit a continuum:

Full social audit	No social audit
----->	
Whistleblowing unnecessary	Whistleblowing possible

The possibility depends on the auditor's ethical perspective and the situation.

CHAPTER 9. COSMIC WHISTLEBLOWING

It is now time to review briefly whistleblowing elsewhere, and the reaction it excites. A small number has achieved fame and acclaim. An example is Leslie Chapman who took the exceptional step of breaking civil service convention, if not the Official Secrets Act, and speaking out about waste and extravagance in the British Civil Service (Chapman 1978). Interestingly enough the problems in his old department, the Ministry of Works, now the Property Services Agency, continue to the present time, with large collusive frauds having continued even after the formal Wardale Committee of Inquiry. Leslie Chapman continued his theme in his next book, but broadened out into local government and nationalized industry. Indeed he was deliberately placed on the board of London Transport as a result of his first book, and set about rooting out abuses there (Chapman 1982). Another whistleblower, on local government and nationalized industry, is Alex Henney (Henney 1984) and it is likely that the stands he has taken has upset the establishment, and led to discrimination against him.

Clive Ponting O.B.E. received considerable publicity when he sent secret Ministry of Defence documents to Parliament revealing Government cover-up over the sinking of the Argentinian warship, General Belgrano during the skirmish over the Falklands. One has to question an action which was perhaps more aimed at restoring naval and government credibility than reaching a diplomatic solution, and which led to substantial loss of life, including on the British side in the retaliatory action of the sinking of H.M.S. Sheffield (Ponting 1985, 1987). Ponting was prosecuted under the Official Secrets Act, but it appears that the jury was more than sympathetic to the defendant, and considered the conspiracy against both Parliament and the public justified the means. Karen Silkwood crusaded against her company and its poor safety procedures relating to plutonium processing. She was among several who suffered contamination

in 1974. Her mysterious death in suspicious circumstances suggested the possible dangers of opposing procedures in such a powerful industry. Another whistleblower received film treatment, this time New York policeman Serpico who informed on police corruption (Maas 1973).

An instructive variation on the whistleblowing theme took place in the case of the merger of two US banks (Buono and Bowditch, 1989). One of the two bank cultures was predominant, and those in the less powerful culture felt both threatened and aggrieved. An opportunity for them to whistleblow presented itself when the merged bank's chief operating officer, formerly the chief executive officer of the dominant bank, issued a memo suggesting that every officer should contribute to the industry political action committee. This was illegal and led to an investigation by the FBI and the Justice Department, and a fine of \$17,000 when the bank admitted to violating federal law. The counterculture of the dispossessed was delighted at the negative publicity, and the group sense of empowerment that it provided. Apparently the practice was common at both banks prior to the merger, but had never been committed to writing. It was this that permitted the opportunity for the attack on the emerging power culture and cultural orientation, even though the fine was comparatively small.

In periods of recession and high unemployment the corporate culture may be too intimidating to encourage even internal whistleblowing. Thus in Costain Engineering and Construction, which by 1993 had shed 40% of its staff, mostly through redundancy, the metaphors of "laying low" and "refusing to rock the boat" were being used to describe the staff's attitude towards speaking out about their company. In a confidential and anonymous report dated 15th June 1993, a manager reported the problems he found in introducing creative management techniques into his part of the company, since employees required strict anonymity. Of eight staff who agreed to take

part in some group exercises, one withdrew at an early stage, believing that exploratory creative group work on how best to handle change management would rock the boat, and result in the lead manager being fired. Another employee (building graduate, age 25, 3 years with the company) commented that the company is largely made up of old school tie / boys abroad networks with lots of back-scratching which will not be given up without a fight. She also referred to Costain's major failing being communication, together with their double standards. Another employee (site engineer, age 26, 5 years with company) said that some people, especially those who had been with the company for a long while, had created a comfortable position for themselves, and so opposed change for fear of having to give their privileges up. Another relevant factor is that this is a family company, and this makes it difficult to bring about changes to undesirable practices if it means confrontation with the views of the family members.

The trouble with whistleblowing, either internal or external, is that there is plenty of material through which to blow. Gerald Mars has shown that occupational crime, sometimes referred to as 'part-time crime' (Ditton 1977), is an accepted part of everyday jobs. 'Fiddling' is not exceptional, but endemic; it is not marginal but integral to the organization and rewards of work. Whether it is called 'pilfering' or 'the fiddle' (UK), 'skimming' or 'gypping' (US), 'le travail noir' (France), or 'rabotat nalyevo' (USSR), Mars argues that it is far from the trivial pursuit it is often made out to be. Mars divides jobs into four categories, and finds that they share similar arrangements to rob, cheat, short-change, pilfer and fiddle customers, employers, subordinates and the state. Category one, hawks, are individualists. They perch unhappily in organizations, and when in them they generally bend the rules to suit themselves. These are the entrepreneurs, innovative professionals and small businesspeople. They aim 'to make it'. Donkeys are highly constrained by rules, and tend to be isolated from each other. Examples are machine minders, supermarket

cashiers and some transport workers. Their response is to resist by disruptive sabotage, breaking the rules. Wolves, such as dockwork gangs, work and steal in packs. They pilfer according to agreed rules and have a well-defined division of labour, with hierarchy, order and internal controls. They distinguish leader and led, and punish their own deviants. Vultures need group support, but act on their own at the feast. They are linked and supported from a common base, depending on information and support from colleagues, but are competitive and act a lot in isolation. With the paradoxical combination of competition and co-operation, instability and turbulence often result for the like of waiters and travelling sales staff. (Mars 1982).

In the hotel and restaurant industry, there are pressures to operate under what three authors call 'ad hoc management', and this in turn tends to work alongside a system of devious reward which compounds the management problems (Mars, Bryant and Mitchell, 144). This then leads to local management's principal concern, which " is to set parameters beyond which pilferage will bring sanctions, but within which it will generally be tolerated" (Ibid, 7). Management exercises considerable control in this situation, since 'troublemakers' can be instantly dismissed for pilferage, even though the practice is institutionalised, and those opting out of the pilferage tradition, which is part of the reward structure, are likely to be subjected to peer pressure (Ibid, 8). With a lack of collectivism, waiters are more entrepreneurs than employees, with significant elements of their income deriving from tips, and this makes the activities of any potential whistleblower all the more sensitive, since it is striking both at the organisation as well as the livelihood of individuals with some of the characteristics of being self-employed.

The benefits obtained rarely feature in audit reports or official statistics. Covert rewards are so intimately connected with some occupations, that it is impossible to

understand whole sections of the economy without reference to them. There are, therefore, no problems of finding examples if you want to be a management mole (Mole 1988). However it does appear necessary to be highly selective, if one is not to become a professional full-time whistleblower.

The path of the whistleblower is not easy, and the bee sting phenomenon may apply. One has only one sting to use, and using it may well lead to one's own mortality, in this case career-wise. In a survey of 87 American whistleblowers from both the civil service and private industry, it was found that all but one experienced retaliation, with those employed longer experiencing more. Harassment came from peers as well as superiors, and most of those in private industry and half of those in the civil service lost their jobs. Of the total, 17% lost their homes, 8% filed for bankruptcy, 15% got divorced, and 10% attempted suicide. (Soeken and Soeken 1987). A similar result emerged from a six year long US study of 64 whistleblowers, ethical resisters who felt impelled to speak out because they had witnessed a serious violation of legal or ethical standards. To qualify for inclusion, each resister needed to have persuasive evidence to corroborate observations, and those appearing to be engaged in personal vendetta or making a deal when charged with improper conduct by a prosecuting attorney were excluded. Most were in their thirties or forties, and were conservative people devoted to their work and organizations. They had built their careers by conforming to the requirements of bureaucratic life. Most had been successful until they were asked to violate their own standards of appropriate workplace behaviour. Whistleblowing was accompanied by economic and emotional deprivation, and led to career disruption and personal abuse (Glazer and Glazer 1989).

In another survey, a questionnaire was completed by 161 whistleblowers; 80 percent of whom were government employees. Severe retaliation and overwhelming personal and

professional hardship were reported by many in this group, which was found to be in many ways exceptional and tending to exhibit a distinctive approach to moral issues and decision-making. Committed to certain values, the group was capable of acting on this sense of obligation despite the strong organizational and situational pressures to the contrary (Jos, Tompkins and Mays, 1989). Few studies of this magnitude have been undertaken in the UK, but those that have come to a similar conclusion. One was on mental hospital nurses (Beardshaw 1981), and another looked across a wider spectrum (Winfield 1990). More individualized biographies also confirm the same point. There could be fewer more tragic stories than of Stanley Adams, a former executive with Swiss pharmaceutical manufacturer Hoffman La Roche, who was imprisoned under Swiss law for exposing in 1973 the company's illegal price-fixing methods to the European Commission (Adams 1984). His wife's probable suicide, financial ruin, and lack of useful support from the European Commission are all graphically portrayed in the film 'Song for Europe'. With an ironic twist, he was arrested at Bristol railway station in 1993 for plotting to kill his new wife.

Not all commentators favour whistleblowing. In 1971 the Chair of General Motors, James Roche, expostulated that:

"Some of the enemies of business now encourage an employee to be disloyal to the enterprise. They want to create suspicion and disharmony and pry into the proprietary interests of the business. However this is labelled - industrial espionage, whistleblowing or professional responsibility - it is another tactic for spreading disunity and creating conflict."

(quoted in Walters 1975, 27)

General Motors has had more than its fair share of turbulence, as one can divine from reading Sloan's reprinted classic of 1963 on the early years (Sloan 1986), and from a

more explicit source which details sixty years of conflict at General Motors, and the serious lacks of corporate and social responsibility, with cover-up and deceit the order of the day (Neimark 1992). As just one example, a joint General Motors - Union of Auto Workers study of 1989 found that workers at the Lordstown, Ohio complex are dying from cancer at a substantially faster rate than the general population, yet the company's initial claim was that "records and test data indicate that there is no problem." (op cit 169) It is clear that James Roche may be regarded as a vested interest, rather than someone who is likely to be considering the wider public interest, which the company seems to have a legacy of ignoring. The situation in Britain is little better (Plowden 1973, Vinten 1985b).

The most notable anti-whistleblower is Peter Drucker, whose original Spring 1981 article in *The Public Interest* has been reprinted (Iannone 1989). His view is that whistleblowing is simply another word for 'informing'. He suggests that the societies in Western history that encouraged informers were bloody and infamous tyrannies - Tiberius and Nero in Rome, Inquisition in the Spain of Philip II, the French Terror, and Stalin. Mao is an Eastern example. To Drucker, under whistleblowing no mutual trust, no interdependencies and no ethics are possible. He roots ethics in an individualism that he attributes to Confucius, and considers that whistleblowing interferes with this. Drucker's view has not gone unchallenged. Courtemanche is a disciple, and Milton Friedman is also in this school of thought. One critic has stated:

"But 'informing' is itself a value-laden interpretation, not a neutral description, of whistleblowing. It is by no means self-evident that whistleblowing is 'informing', and Drucker offers us no support for his claim. Such support requires as its basis rigorous normative reflection; and it is reflection of this kind that is precisely the province of business ethics". (Hoffman and Moore 1982)

There was also an editorial survey in *Business and Society Review*, (Orr 1981) in which a group of leading businessmen and thinkers were invited to comment on the Drucker article. Although there was a variety of views, Drucker was generally found oversimplistic, and Monte Throdahl, senior vice-president of Monsanto, said that his company had made a virtue out of whistleblowing, particularly in relation to safety and environmental issues. Alan Westin reckoned that Mr. Drucker and those like him who referred to whistleblowers as rats, and whistleblower protection legislation as rat protection, more properly deserve the label of totalitarian. They would, he suggests, elevate silent loyalty to employers who act unlawfully or in clear disregard of public interests above any moral or social duty.

Whistleblowing sounds like a less exotic response to organisational life if you argue that the study of ethics in business is primarily concerned to help individuals operating in organisations to identify behaviour which will not be detrimental to human welfare, and more positively to encourage behaviour which will benefit it. It follows that ethics will also help to determine which organisational systems make the attainment of ethical behaviour more or less difficult for the individual (Blois, 1985, 220). It can certainly be argued that evading questions about the ethical implications of one's actions constitutes moral negligence (Lewis, 1972). Sound ethical thinking must be based on as full an understanding of a situation as it is possible to obtain in a given situation (Fletcher, 1966), and there is also a need to consider unintended or undesirable consequences of decisions (Schelling, 1981). Any view of life that stops short of a rigid totalitarian attitude must make allowances for the legitimacy of individuals asserting alternative moral standpoints, and occasionally, in extremis, blowing the whistle. Otherwise the Kantian categorical imperative must be stifled, as must sometimes also the utilitarianism principle of the greatest good of the greatest number.

The Director of the University of Leeds Centre for Business and Professional Ethics has raised the intriguing question as to whether we should credit whistleblowers with having acted from a sense of duty if they are known to have grudges against their employers. She considers that this is a Catch 22 aspect to the whistleblower's predicament. If they blow without having exhausted internal channels, their deed seems irresponsible; they do harm without being able to show that it was necessary. Yet if they do exhaust all internal channels before they blow, they must surely have acquired grouses against their employers - if they did not have them already, since their employers have failed to heed their appeals. Thus, she argues that whistleblowers, it may seem, never deserve our respect : they either act irresponsibly or they act maliciously. The rest of her exposition shows that mixed motives are common, and that it is necessary to examine the evidence on each separate occasion. A business may donate to charity through, at least in part, compassion. As long as this enhances the image of the business, who knows? If the charity should suddenly go out of fashion, and the business immediately withdraws support, does this demonstrate that there was never any real compassion? Jackson argues that this is not necessarily true. The business may have cared, and still care, but not so much as to place the business at risk: there are other duties - to family, to employees, which take priority. She concludes that:

" Arriving at a fair and accurate account of someone's motives including one's own, is fraught with difficulty. Often there are several plausible motives behind our actions : some flattering, some unflattering. The most plausible interpretation of an individual's behaviour is not necessarily the right one. People can act out of character. Because of the obscurity of motives and the importance of motive in the exercising of virtue, there is no easy and certain way of assessing moral character." (Jackson 1992).

Another writer has drawn comparisons between civil disobedience and whistleblowing (Elliston 1982). A text on strategic management includes a chapter on business ethics, and the contributor suggests that thoughtless observers may criticize whistleblowing as 'squealing', an adult version of the school child's criticism of 'tattling'; whereas in fact any enforcement of law and ethics must rely partly on whistleblowers. (Benson 1990) Examining specific cases would certainly seem to suggest the public good emanating from whistleblowing. We have the case of the problems with the cargo doors on the DC-10 aircrafts in the 1970's (Beauchamp 1989, 40-47) and the security guard in the shopping mall who refused to let drunk drivers on to the public highway, calling in the police, as the Security Officer's Manual dictated. He was dismissed, and the National Labor Relations Board found against him, since whistleblowers were legally protected only if they engaged in 'concerted activity' together with their fellow workers (Ibid, 48-52). This shows the vulnerability of whistleblowers under labour law. Protections may not be perfectly improved even where there is specific legislation, such as the Civil Service Reform Act, since the regulator, the Office of the Special Counsel, was at the outset accused of being ineffective, sometimes deliberately so (Devine and Aplin 1986).

The best approach from the perspectives of organisation, employees, and the public interest, is to institutionalize and internalize whistleblowing. Managers may prefer to find out about nasty problems before the story hits the 11 O'clock News, and companies with foresight are now setting up telephone hot lines to the top, and employing ombudspeople and encouraging employees to use them (Brody 1986). Other companies may use itinerant company lawyers as the channel of communications for whistleblowing (Andrews 1989, 198). Another approach is to set up consumer advocates with independence and a direct line to the top (Adamson, 1982). Government has various channels to assist, with a requirement for supporting documentation and

periodic audit of it (General Accounting Office 1988). The question still remains as to what protections there need to be if, under pressure of competition, company policies bend, and the ombudsmen and advocates become co-opted into the company agenda (Newton and Ford, 1990, 64).

9.1 THE CONTINENTAL EUROPEAN PERSPECTIVE

It is difficult to make a systematic study of whistleblowing, since there is no available sampling frame. This is a sensitive subject, and not all wish to maximize publicity. Most researchers try to accumulate leads from whatever sources present themselves. Thus the Glazers' six years of travels throughout the U.S. interviewing whistleblowers was based on those few mentioned in previous academic studies, on journalistic accounts, those known to the Government Accountability Project, the major whistleblower defense organization situated in Washington D.C., and self-reports from those who learned of the research. (Glazer and Glazer 1989, xiii). Another study refers to the problem of having to rely on the anecdotal evidence of those who choose to sound their concerns, but they too had to rely on a networking of contacts to achieve their sample of 213 individuals. (Jos, Tompkins and Hays 1989).

In the European case the problems are compounded since no one researcher will have regular access to all the academic and particularly journalistic sources, let alone have the language skills necessary. Pan-European journals are rare, and their coverage has to be so wide, that coverage of whistleblowers is likely to be spasmodic and probably non-existent, since few have significance outside national boundaries. The European Parliament Press Office in London has stated that it is an open institution, and thus whistleblowing is rendered unnecessary. The European Commission Press Office in London indicated that it believed that the Stanley Adams affair was one-off, but it was

keen to point out that this was whistleblowing on behalf of the Commission, not against it.

Lord Stanley Clinton-Davis, interviewed by Gerald Vinten at the office of solicitors S J Berwin and Co. on Friday 3rd May 1991, confirmed that during his time as either Transport or Environmental Commissioner there was no instance of employees informing on their organizations. There were, however, quite a number from ex-employees who might be members of pressure groups such as Greenpeace or Friends of the Earth. Lord Clinton-Davis agreed with the Commission Press Office in being unaware of anything similar to the Stanley Adams case. In the twin cases of environmental abuse and price-fixing the Commission was duty-bound to act on information received, and this led to a prolonged but democratic process at no cost to the informant. Lord Clinton-Davis also indicated some decisions about which he would have been prepared to blow the whistle had matters turned out differently, and one in which he did.

In this last case he broke the convention of maintaining the confidentiality of Council of Ministers deliberations relating to the export of fertilizers and pesticides to the Third World, notably to Africa. These were banned in Europe because of public health hazard. The European chemical companies lobbied hard, expressing concern about the lack of competitive trade with Japan if the export were banned. Lord Clinton-Davis achieved two conditions:

1. Importing countries should be notified of the chemical constituents
2. More importantly there should be a cooling-off period of 90 days providing the opportunity to decline the contract.

Lord Clinton-Davis was subsequently forced to water this down to 60 days, and got the conditions through on the basis of that compromise. World Health Organization statistics showed vivid and appalling consequences from the use of these chemicals, and Lord Clinton-Davis considered that the quicker he blew the lid off the Council of Minister procedures, leading to the European Community's worst failure in his opinion, the better it would be. However he did suggest a need for reticence in whistle-blowing since there could be a knock-on effect that could jeopardize other European Community negotiations.

The discovery of wine fraud is documented to have been attributable to informers on certain occasions. The Bordeaux 'Winegate' trial of 1974 involving the Cruse family's doctoring of wines was one such example, although the fraud was so widespread, with 30,000 hectolitres of counterfeit wine produced within four months, that it is surprising that an informer was necessary. In Germany there was the monumental invert sugar scandal. For just one kilo of invert sugar, 46 bottles of humble tafelwein could be converted into aristocratic and expensive auslese wine. One Mosel company alone was reckoned to have produced more than thirteen million bottles of illegally sweetened wines. Four years prior to the fraud hitting the headlines in 1980, a government wine-chemist had told her superiors that she suspected that the wine of the then President of the German Winegrowers' Association was fraudulent. She was warned against mentioning her findings to the prosecuting authorities, and received anonymous death threats. (Fielden 1989). The North Sea oil rigs are another example (see chapter 10.2).

Other cases to hand rely more on distant memory or brief mention in newspapers:

FRANCE. In about 1973 a civil servant disclosed tax irregularities. He was

dismissed - or sued for defamation.

Following the murder of the Greenpeace photographer when the French secret service sunk the ship 'Rainbow Warrior' in Auckland harbour, New Zealand, using explosive devices, two members of the service went public. They were arrested on espionage charges which were subsequently dropped.

GERMANY. A civil servant published an article on deficiencies in his department. He applied to the European Convention on Human Rights.

HUNGARY. A security service member revealed the continuation of the monitoring of Members of Parliament and the like after the liberalisation of the country. He was prosecuted and convicted, because he should have gone through the official channels.

ISRAEL. In 1986 Vanunu revealed to the Sunday Times the existence and details of nuclear plants, which officially did not exist. He was enticed from England to Italy by a femme fatale, since it was considered easier to kidnap him from there. He was abducted to Israel, convicted, and given a twenty five year prison sentence. He is regarded there as a traitor.

SWEDEN. Three members of the Information Bureau, an intelligence agency whose existence was not known to Parliament, disclosed its existence to journalists, and articles and a book resulted. All three were convicted of espionage. Ian Guillou is now a TV presenter;

Peter Bradt wrote 'The I.B. Affair', and Hakon Isakson now works for the Stockholm Education Service, as a result of which he feels unwilling to discuss the affair.

SWITZERLAND.In the Swiss files affair, in about 1989, the female Justice Minister disclosed to her banking husband that an investigation was underway on money laundering that involved him, and that wires were being tapped. Although acquittals followed, the outcome was the revelation that the secret service had dossiers on many more citizens than were known about.

NORWAY & DENMARK	Cases here tended to rely on use of public sources rather than inside information.
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EUROPEAN	Solicitor Patrick Latham of the Consumer Policy Commission Group of the European Commission had his advice overruled. He resigned, and is currently bringing a case before the European Court.
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It is clear that more research is needed. The way forward could be a collaborative venture through the European Business Ethics Network whereby local correspondents would take responsibility for their own country, and a co-ordinator would bring the various strands together, as editor of a major and worthwhile publication.

Acknowledgement. This section benefitted from discussions held with Lord Stanley Clinton-Davis and for the country examples with James Michael of the Law Department of University College, London.

CHAPTER 10. WHISTLEBLOWING ON DISASTERS.

"This is the excellent foppery of the world...we make guilty of our disasters the sun, the moon and the stars, as if we were villains by necessity, fools by heavenly compulsion, knaves, thieves and treachers by spherical predominance, drunkards, liars, and adulterers by an enforced obedience of planetary influence."

Edmund, bastard son of Gloucester. Shakespeare, *King Lear*, 1 ii. 132 (Wells and Taylor, 1987, 1239).

10.1 INTRODUCTION

Disasters represent a situation in which the value of the whistleblower acting in the public interest is more difficult to malign. Retrospectively, although rarely prospectively, the whistleblower may be transformed from organisational nuisance to public hero. Examples are drawn from the oil, defence and nuclear industries, commercial aircraft and space exploration.

All crises and disasters that are not acts of God may be attributed to systems failure, whether they involve incidents like the accident at Three Mile Island nuclear power station, the capsizing of the Alexander L Kielland rig in the Norwegian oil and gas fields in the North Sea (Bignell and Fortune 1984), the Ronan Point Tower Block collapse, the foundering of the Motor Vessel *Burtonia* off Lowestoft, the crash of the Trident *Papa India* in a field near Staines (Bignell, Peters and Pym 1977), great planning disasters such as San Francisco's BART System (Hall 1980 and Anderson 1980), or notorious commercial disasters (Winkworth 1980). The need to undertake a systems audit was present in all these examples, but it becomes particularly acute where the consequences of the system failure are life-threatening. Even with acts of God, it is

possible to formulate disaster recovery or contingency plans, and to exercise appropriate risk management. It is possible to distinguish active and latent failures. It is the practice for accident investigators to concentrate on the first rather than the second. We are concerned here with the latent category, since the time period of active cases is too rapid to permit much by way of whistleblowing. There are always potential whistleblowers in such latent situations, with the time to reflect and decide whether to go ahead and take the personal risk of external disclosure.

These situations were all matters of high public and often global concern : Piper Alpha in the North Sea with 165 dead, Karen Silkwood and plutonium contamination, the attempted launch of the Challenger space shuttle, defective doors on the DC 10 aircraft, the dubious sinking of the General Belgrano and the retaliation in the Falklands conflict, the ecological damage caused by the Exxon Valdez spillage, and the economic ruin and destabilisation occasioned by the collapse of the Bank of Credit and Commerce International. In each case warnings from those with an awareness of the hazards and risks went unheeded, and the whistleblowers suffered severe penalties for their public-spiritedness.

10.2 EXAMPLES OF WHISTLEBLOWING ON DISASTER.

The North Sea oil rigs are an important source for the world oil markets. Despite the high safety risks and the precautions that need to be taken, there has been one major disaster, and several less serious ones. One commentator refers to the repetitive litany of yet another committee of enquiry, this time Lord Cullen's findings (Cullen 1990) on the Piper Alpha disaster with the death of 165 workers. The writer suggested that it would almost be possible to write a common core report that would readily apply to every variety of disaster: the findings of previous reports concealed or not actioned;

lack of independence or effectiveness of inspectorates; failure to adopt a participative management style and, worst, the "not required back" stamp for those employees who dare complain of health and safety abuses, particularly those who threaten to or actually blow the whistle. The Norwegians have much more humane industrial relations practices, with whistleblowing being internalized and readily actioned. If it is impossible to emulate Norwegian practice in the over-secretive United Kingdom, then at the very least anonymous telephone hotlines should be introduced, and safety ombudspersons appointed, so that those who know, and will suffer the consequences, will have a sure means of communication, and penalties of the highest magnitude may be applied to those who opt to ignore them (Vinten 1990d, 1994).

Vaughan Mitchell was a North Sea oil rig worker dismissed after reporting unsafe practices relating to welding, and the possibility that the whole rig could blow up. The amazing fact was that he was expressing his concerns just two months after the Piper Alpha disaster. Far from finding a ready audience, he found himself out of work and having to lease his flat and run up debts which took years to pay off. The Department of Energy had notices displayed around the rigs guaranteeing confidentiality to anyone who contacted them about safety problems. Vaughan found that this was not observed, and neither was the Department concerned about the predicament and financial loss and emotional upheaval to which he then became subjected.

Mercifully in 1992 came the realisation from Department of Employment Minister Michael Forsyth, following a recommendation of the Cullen Report, that offshore safety workers must not be victimised. Hitherto, workers dismissed for raising valid concerns could make a complaint of unfair dismissal to an industrial tribunal provided that they met the qualifying conditions - two years continuous service for those working 16 hours or more a week, and five years continuous service for those working

between 8 and 16 hours a week. The Offshore Safety (Protection against Victimisation) Act 1992, which became law on March 16th, gave additional protection to safety representatives and safety committee members who work offshore. They may now complain to an industrial tribunal regardless of their length of service or hours of work. On July 10th 1992 the Minister announced that he intended to extend the legislation in two ways. Firstly it would now extend to onshore workers, and secondly it would apply to all workers.

He reiterated the message when he visited Shell/Esso's St. Fergus gas terminal, near Peterhead on 2nd October 1992. Baroness Turner introduced a private member's bill at the end of 1992, and it was implemented in 1993. A complementary measure was the "safety case" regulations of the autumn of 1992, which require operators of offshore installations to demonstrate that all major safety risks have been comprehensively reviewed and rigorous controls put in place (Health and Safety Commission 1992). Implementation was the end of May 1993 for new installations, and November 1993 for existing installations. A 'safety case' is a top to bottom assessment of the major risks posed on the installation, and how management is going to identify and control them to the satisfaction of the Health and Safety Executive. Companies will need to invest to achieve the higher standards required, and the Minister was unapologetic for making the protection of people on offshore installations paramount, even where substantial cost to industry may be involved.

The Karen Silkwood case, movingly depicted in the 1983 film "Silkwood", shows the sinister pressures that can be placed on whistleblowers who dare to take on powerful organisations (Halbert and Ingulli 1990, 200-213). Karen was a laboratory analyst for Kerr-McGee at its Cimmaron plant near Crescent, Oklahoma. The plant fabricated plutonium pins for use as reactor fuel in nuclear power plants. During a three day

period in November 1974, she was contaminated by plutonium, by day three to a high level, and contamination was also found in her flat, leading to the destruction of many of her personal belongings. As a not unsurprising reaction, she became even more concerned at the health and safety of the plant than she had been three months earlier when she had attended union headquarters with a view to mounting a campaign. In September and October she had been actively involved on behalf of the union, helping to educate workers about plutonium, recruiting votes for the recertification of the plant, and recording instances of contamination. She had been present at bargaining sessions, including one on the day of her death. The fatal car crash happened when she was leaving one such session, and on her way to meet a reporter from the New York Times. She had a folder of evidence documenting not only contamination, but also proof that the company was doctoring its quality control records and processing defective rods. The file was never discovered, and many believed that it was a matter of murder rather than an accident.

In the legal case that Bill Silkwood, her father, brought, it transpired that the company did not always comply with Nuclear Regulatory Commission (NRC) standards. The case went as far as the US Supreme Court (104 S. Ct 615, 1984), which upheld the jury verdict in favour of Silkwood, with \$500,000 for personal injuries, \$5,000 for property damage, and punitive damages of \$10 million. The NRC has estimated that a worst case accident at a nuclear plant could cause as many as 100,000 deaths within a year, and as much as \$300 billion in damage. The 1957 Price-Anderson Act, an amendment to the 1954 Atomic Energy Act, established an indemnity scheme under which operators in licensed nuclear facilities could be required to obtain up to \$60 million in private financial protection, with the government topping this up by another \$500 million, with the \$560 million being the limit of liability for any one accident.

Another classic case was the Challenger launch decision, which took place on 28th January 1986 (Liedtka 1990). NASA originally had had a "get there - safely" culture, and had actively encouraged internal whistleblowing, which was viewed as supporting the drive for safety. This single and simple goal came to be replaced by a multiplicity of conflicting goals, "get there safely, cheaply and on time". Managers and administrators were left to satisfice as best as they could. As early as April 1985, serious problems were identified in the rocket booster seals. In July Morton-Thiokol engineer Boisjoly warned in a memo to his senior management that there could be catastrophic losses if improvements were not made. The decision was made to fly "as is" until modifications could be made. By the time of the launch, NASA was concerned to regain face by launching as far as possible to schedule, since there had been long delays and cancellations in previous projects. Thiokol engineers were aware of the hazards, but were persuaded by administrators to place their objections aside, on the basis that they were speculative, with little conclusive data. Why the engineers did not blow the whistle, as required by their professional code of ethics, may be explained by the hypothesis of exit and voice, that the effort an interested party makes will be in proportion to the advantage to be gained from a favourable outcome multiplied by the probability of influencing the decision. For the engineers, the balance sheet seemed to be negative. The personal advantage was, at best, keeping their jobs, at worst losing them, even if they were successful at stopping the launch. There was only a small probability of influencing the decision. There was no heroism in stopping the launch in advance, since no one could predict that an explosion would occur. This is a splendid example of the latent type of failure.

A similar situation pertained to the defective doors on the DC-10. Convair were subcontracted to build the fuselage and doors. Problems with the doors had shown up during the test flight, and in subsequent testing (Beauchamp 1989, 40-47). Indeed on

12th July 1972, an aft cargo door had blown out 11,750 feet over Windsor, Ontario during a flight from Los Angeles to New York. Structural damage was caused, and nine passengers and two stewardesses injured. Convair's Director of Product Engineering wrote a memo in which he stated:

" It seems to me inevitable that, in the twenty years ahead of us, DC-10 cargo doors will come open and I would expect this to usually result in the loss of the airplane."

There were worries in Convair that the cost of modification might fall on them, and McDonnell Douglas had already shown itself less than eager to incorporate more than band-aid type modifications. The hierarchy above the Director decided to take no action, and he simply filed his memo. It was in 1974 that a DC-10 owned by Turkish Airlines crashed near Paris, killing all 335 passengers and 11 crew. Experts agreed that the immediate cause of the accident was a blow-out of the rear cargo door twelve minutes after lift off. Sanford Douglas, President of McDonnell Douglas, whom the writer once met in St.Louis after a speech he gave on business ethics (McDonnell 1991), denied the cause.

The Clive Ponting case was discussed in chapter 9.

The Exxon tanker "Exxon Valdez" ran aground on 23rd March 1989 in Prince William Sound in Alaska, spilling 11 million gallons of crude oil over an area of 100 square miles that is of strategic significance to the global environment, and with after-effects that will last well into the next century. Half a million birds and thousands of animals died, including seals, killer whales, and sea otters. Captain Joseph Hazelwood was not on the deck at the time, despite this being a period requiring his command, and he was known to have an alcohol problem. A female crew member had twice reported a red

buoy to the starboard bow that should have been to the port side, but this was ignored until it was too late. The cost to Exxon of the clear-up was \$2.5 million. The response of the Alyeska Pipeline Terminal, a coalition of seven oil companies, was slow and inadequate, given the criticality of the first few hours after a spill. Permissions had been granted to oil companies on the basis of the adequacy of response, but this agreement was not honoured. The District Supervisor of the Alaska Department of Environmental Conservation (ADEC), Dan Lawn, spoke out about the huge inadequacies that had been apparent for some time before, and for his 'whistleblowing' he was dismissed from his post. In January 1992 a court ordered his reinstatement, but this has yet to happen. Exxon had experienced 20 years with no spills, but had now had two spills in the one year, the Hawaia having earlier spilled 35,000 gallons, which were rapidly cleared up. The BP tanker, Thompson Pass, had spilled 70,000 gallons in Alaska in January 1989.

Just before the disaster, the Exxon shares attracted an premium over the rival companies of \$2 to \$4. Afterwards, a discount of \$2 to \$8 applied. It can be calculated that this loss of \$4 to \$12 per share indicated market expectations that Exxon would need to spend between \$5 billion and \$15 billion for the clean-up operation. This contrasts with direct costs of around \$2.5 billion, plus the fine of \$1.5 billion. Exxon's profit figure for 1989 was \$5 billion. It can be seen that the share price reduction was far in excess of the costs involved.

The Bank of Credit and Commerce International case has already been discussed in section 6.5.

It is clear from all these disaster cases that there is an overwhelming public interest in encouraging potential whistleblowers to come forward. If they are to come forward, there is equally a need to provide adequate employment and financial protection.

CHAPTER 11. LEGAL PROTECTION FOR WHISTLEBLOWING?

In comparing the legal situations relating to whistleblowing in the US and the UK, we are immediately confronted by a paradox. At first sight it appears to be a comparison of the liberal with the illiberal. The US has a whole series of acts which collectively are referred to as whistleblower protection acts (Kohn and Kohn 1986). It also has a Freedom of Information Act which should reduce the incidence of whistleblowing. By contrast, on the other side of the Atlantic in the UK we have the Official Secrets Acts, 1911-1989. Prior to the 1989 Act, Section 2 of the 1911 Act criminalised leakages of official information which represented simply a betrayal of trust, or an embarrassment to the government (Thomas 1991). There are now, under the 1989 Act, six specific areas of information protected " in the public interest ". These are:

1. Security and intelligence.
2. Defence.
3. International relations
4. Crime and special investigation powers.
5. Information resulting from unauthorised disclosures or entrusted in confidence.
6. Information entrusted in confidence to other States or international organizations.

A harm test applies to most of these areas, so that the jury rather than the Minister will decide the extent of harm.

The liberality - illiberality comparison starts to fall down, however, with the centrality in US law of the employee-at-will doctrine, which sees both parties as equal in the employment contract, and therefore either may terminate the contract at will for no reason at all. An employee hired for an indeterminate period of time may be discharged

at any time for any reason or no reason at all. The idea was that there was a pleasing symmetry between the right of a person to sell labour upon such terms as is deemed proper, and the right of the purchasers of labour to proscribe the conditions of such labour, including termination-at-will. The British adhered to this doctrine until the the 1971 Industrial Relations Act, which gave an employee the right not to be unfairly dismissed by an employer. Even before this Act, there was case law indicating that there is a public interest defence in the unauthorised disclosure of confidential information, and this is seen as applying to a wide range of matters, of which iniquity on the part of the employer is only one example (Smith and Wood 1986).

The US has seen a relaxation of the severity of the employee-at-will doctrine over the years, and so where a discharge violates a clear mandate of public policy, an action for wrongful discharge may be upheld against the employer (Feliu 1979-1980). In the public sector there are explicit safeguards for whistleblowers in the so-called Whistleblower Protection Acts (see Appendix 3). There has been criticism of their effectiveness (Devine and Aplin 1986), but some more recent optimism (Fong 1991).

The Office of the Special Counsel was established in Washington DC 1979 with a direct remit to protect genuine whistleblowers. There was a concern that the Office was sometimes becoming the refuge and protection of the incompetent and the problem employee, rather than protecting employees from arbitrary and capricious management actions (Office of the Special Counsel 1985, 2). The reason for setting up this expensive mechanism was that whistleblowers were seen as fulfilling a useful role in helping to eliminate inefficiency, corruption, mismanagement, abuse of power and other inappropriate activities, which became more frequent as the federal government grew larger and more complex (Leahy 1978). The whole process has been subjected to periodic audit (General Accounting Office 1985, 1988) with a view emerging that the

process operates adequately and as intended, although there is a need for there to be more publicity about the available remedies, and some executive agencies fail to carry out their responsibilities in a timely fashion.

What is the legal position should an employee decide to blow the whistle, or be asked to deal with an employee who has so done? In the U.S. increasingly the courts have been prepared to admit to a defence based on noteworthy public interest. This will depend on the substantiality of the relevant public policy, where and in what context it was announced, how it fares when weighed against the employer's and society's broader interests, and whether the violation was so offensive as to justify carving an exception to the all-pervasive employer-at-will doctrine. Public sector employees in the U.S. enjoy considerable protection under the so-called whistleblower protection acts, with compensation of up to \$500,000, and an independent protection agency, the Office of the Special Counsel.

Under English law there is an implied duty not to misuse confidential information belonging to the employer, and this duty may continue to operate after the termination of the employment. There are, however, practical difficulties in dealing with ex-employees, and where matters of confidentiality are likely to be significant, the best course is to extract from the employee an express restraint clause. Not only is this more certain and effective, but if valid it may also stop the former employee from entering employment in which there is a high probability that the information may be used. The one exception to the duty not to misuse confidential information occurs where disclosure is in the public interest. This may apply where the employer is committing a criminal offence, but it goes beyond this to include situations where the public has a serious and legitimate interest in the revelation.

The law will often weigh up the benefit versus the disbenefit of public disclosure. In the 1975 case of *Distillers Co (Biochemicals) Ltd v Times Newspapers Ltd* publication of documents obtained during the discovery process for judicial proceedings was prevented. This was on the basis that the public interest in the proper administration of justice was greater than the public interest to know the contents of these particular documents. In contrast, in the 1984 case of *Lion Laboratories Ltd v Evans*, which involved the potential inaccuracy of the Intoximeter 3000 which was being used to substantiate evidence in court, there was considered to be a right even a duty for the press to publish, irrespective of the unlawful means used to obtain the information, the 'flagrant breach of confidence', and the motives of the informer. In a similar view of the ends justifying the means, in the 1979 case of *Malone v Metropolitan Police Commissioner* a defence of just cause was allowed where the information obtained by telephone tapping was found to be completely innocent, on the basis that there had been reasonable suspicion. Appendix 3 sets out case law with a bearing on whistleblowing.

What remedies are there available to the employer in the event of misuse of confidential information? For an existing employee, there may well be good grounds for dismissal, which the courts will probably uphold as fair. For an ex-employee, an injunction may be sought restraining from passing on information, or claiming damages for breach of the implied duty. If the information has already been passed on to a third party, such as a competitor company, then legal remedies are possible against this third party.

The question remains as to how much protection this really affords the whistleblower. What is most likely to happen is that the whistleblower will be dismissed and may then have recourse to an industrial tribunal. The odds here tend to be against the complainant, but success is less likely to result in reinstatement, and even where it does, the employer can ignore the order and simply pay damages, assuming that the

complainant has the energy to take another legal action.

An award of damages is the more likely successful outcome, but this will rarely be any more than a token payment in view of the financial loss that most whistleblowers experience. As the late Brian Raymond, senior criminal partner of Bindman and Partners and defender of famous whistleblowers such as Clive Ponting, Dr. Wendy Savage, Dr. Helen Zeitzman and Charge Nurse Graham Pink J.P., expressed it to me, whistleblowers are left practically naked in terms of the law, and the best redress is to rely on public opinion and the political process. Before employers start to rejoice, they do need to consider the large amount of staff time and costs needed to fight such cases, as well as the possibility that the organisation may be shown up in unfavourable light. European legal decision in 1992 removed the ceiling on payments of damages, and so dealing with whistleblowers who are vindicated could be more expensive.

There is a form of legalised "whistleblowing" in English and Welsh local government. According to advice in 1985, the Chief Financial Officer, under the Local Government Act 1972, is prevented from acting in any way which would encourage or assist unlawful conduct by his authority. He or she needs to disassociate from such conduct, and report to the ratepayer (CIPFA 1985). This received statutory support under section 114 of the Local Government Finance Act 1988 which places a duty on the officer responsible for the financial affairs of a council in England and Wales to report where it is believed unlawful expenditure may be or has been incurred, where a loss or deficiency is likely to arise from an unlawful action, or where an unlawful item of account is to be entered. Further reinforcement was provided by section 5 of the Local Government and Housing Act 1989, which also applies to Scotland, and the designation of a Monitoring Officer with a duty to report on contravention of any enactment, rule of law, or code of practice underpinning any enactment.

One of the most momentous to impact the public sector accountant in the past few years involved interest rate swaps, the London Borough of Hammersmith and Fulham taking a pioneering role. The House of Lords in *Hazell v London Borough of Hammersmith and Fulham* 1991 ruled that a local authority has no power to speculate with the public's money and it cannot therefore lawfully trade in interest rates whether for purely speculative purposes, or in the hope of reducing the burden of interest payments or increasing the proportion of variable rates to fixed obligations, or as an interim strategy to rectify potential loss from previous unlawful swaps.

The Committee of Inquiry set up by the Borough (Veeder et al 1991) found in the Director of Finance, Mr. Clive Holtham, a most serious managerial failure to ensure adequate supervision and control, and that the difficulties would not have developed as they did, but for that failure. The deputy suffered dismissal, and it is clear that Mr. Holtham would have suffered the same fate had he not have left to take up an academic position at the City University Business School (Vinten 1992n). Following this, and local authority losses in BCCI, two codes of practice were quickly formulated to provide a link between section 114 of the 1988 Act and section 5 of the 1989 Act and the treasury management function (CIPFA 1992, 1992a).

The law in itself can never be fully satisfactory, and one only has to think of legislation on equal opportunities and race relations to bear this out. On the issue of sexual harassment it has been suggested that "Employees cannot rely on the societal consciousness of individual managers, faced with conflicting priorities, to meet their need for a safe and respectful work environment." (Wright and Bean 1993) This then leads to the desirability of an effective sexual harassment policy which should:

- (1) provide employee education as to what constitutes sexual harassment, and

- how the victim can seek remedy within the company;
- (2) provide fair and prompt investigation;
- (3) protect against false accusations;
- (4) provide effective discipline of harassers. (Frierson 1989)

On the other hand, those who are forced to wrestle with all the uncertainties of basic employment law would be delighted to have the reassurance of whistleblower protection legislation. Reasonable certainty in law is supposed to be a cardinal principle, and one that litigants have a right to expect. At least it would provide a strong impetus for miscreant organizations to improve their performance. Beyond this, as always, the responsibility rests with the various organs of society, and controls will need to be introduced here to ensure that abuse does not take place. Without the legislation, abuse of valid whistleblowers is easy and may soon become endemic.

The Sun newspaper on 30th June 1993 reported an interview with Radio One controller Johnny Beerling. He had sacked comedian Kenny Everett in 1970 for an interview he gave to the music paper, the New Musical Express, in which he was mercilessly critical of the BBC. The managing director of the BBC, Ian Trethowan, called in Beerling to say that Everett had been guilty of gross insubordination and would have to go. There was a clause in Everett's contract forbidding him to speak to the Press without going through official channels, and he had clearly done that. Beerling appealed for him not to be sacked, but he was, the same day. "Gagging clauses" may be present in job contracts, and imposed on whistleblowers as part of any legal settlement reached.

In summary, the legal protections accorded the whistleblower in the U.K. are uncertain and inadequate. There are more far-reaching protections in the U.S. Since the law can only provide limited help, it is more sensible to "legislate" at the level of the individual organisation, through corporate codes, and that forms the content of the next chapter.

CHAPTER 12. A CODE OF ETHICS FOR WHISTLEBLOWING

There is much value in companies setting up codes of practice for whistleblowing. This can work to their advantage, as well as protecting whistleblowers. On the other side of the coin, there is a case for setting up a code for the whistleblowers themselves. Two experts in corporate culture have indicated in their categories of the storyteller and spy that, despite their titles, both are essential to the cohesiveness of an organization. Both are harnessed for the greater good of the organization, but if they are not, then it is easy to see how they could engage in a form of external whistleblowing that would potentially damage their organization (Deal and Kennedy 1988). As with any other activity, there are degrees of validity, with extremes of unacceptability and acceptability.

Thus we have Norman Bowie's (1982, 143) ideal requirements of justifiable acts of whistleblowing:

- (1) that the act of whistleblowing stem from appropriate moral motives of preventing unnecessary harm to others;
- (2) that the whistleblower use all available internal procedures for rectifying the problematic behaviour before public disclosure, although special circumstances may preclude this;
- (3) that the whistleblower have "evidence that would persuade a reasonable person";
- (4) that the whistleblower perceive serious danger that can result from the violation;
- (5) that the whistleblower act in accordance with his or her responsibilities for "avoiding and/or exposing moral violations";
- (6) that the whistleblower's action have some reasonable chance of success.

Other writers have suggested practical points for whistleblowers to ponder. Velasquez (1988, 381) has made a composite, based upon several other writers:

1. How comprehensive is the worker's knowledge of the situation? Is the worker's information accurate and substantial?
2. What, exactly, are the unethical practices involved? Why are these unethical? What public values do these practices harm?
3. How substantial and irreversible are the effects of these practices? Are there any compensating public benefits that justify the practices?
4. What is the employee's obligation to bring such practices to an end? Can the employee do more to end the practices by working within the organization or by going outside? What probable effects will either alternative have on the company's practices? On society? On the firm? On other organizations? On the employee?

Similarly Sissela Bok catalogues three levels of moral conflict, which one may regard as in a cascade. First is to consider whether whistleblowing truly is in the public interest. Secondly there is the professional ethic requiring collegial loyalty, with codes of ethics often stressing responsibility to the public over and above duties to colleagues and clients. Thirdly there is the fear of retaliation (Bok 1980). Another writer refers to ethical tension points (ETP's) in whistleblowing, and distinguishes procedural ETP's, such as does the whistleblower have low tolerance for shortcomings, and how often and with what intensity does one blow the whistle, and the more agonizing substantive ETP's, which are one's obligation to the organization, colleagues, the profession, one's family, oneself, the general public, and to strengthening basic values, such as

truth, independence, fairness, co-operation and loyalty. (Jenson 1987)

Richard T De George (1986) has suggested three conditions which may turn whistleblowing from being an act of disloyalty, damaging an organization, to being morally justifiable:

1. The firm, through its product or policy, will do serious and considerable harm to the public, whether in the person of the user of its product, an innocent bystander, or the general public.
2. The matter should be reported to the immediate superior and the moral concern made known.
3. If no action results, the employee should exhaust internal procedures and possibilities. This usually involves taking the matter up the managerial ladder, and, if necessary and possible, to the board of directors.

In James' (1994) analysis, that relies heavily on De George, the following list of considerations is provided :

1. Make sure that the situation is one that warrants whistleblowing.
2. Examine your motives
3. Verify and document your information
4. Determine the type of wrong-doing involved and to whom it should be reported

5. State your allegations in an appropriate way.
6. Stick to the facts
7. Decide whether the whistleblowing should be internal or external
8. Decide whether the whistleblowing should be open or anonymous
9. Decide whether current or alumni whistleblowing is required
10. Make sure you follow proper guidelines in reporting the wrong-doing
11. Consult a lawyer
12. Anticipate retaliation.

Under point 9, some blow the whistle after they have left their organisation ('alumni whistleblowing') to avoid direct recrimination, and in the knowledge that the law relating to employee confidentiality of company practices and procedures is often impractical to enforce on ex-employees, even if there were not a public interest defence.

Some of the problems of the over-ready countenancing of whistleblowing have been outlined by Alan Westin (1981):

1. Not all whistleblowers are correct in what they allege to be the facts of management's conduct, and determining the accuracy of charges is not always easy.

2. There is the danger that incompetent or inadequately performing employees will whistleblow to avoid facing justified personnel sanctions.
3. Employees can choose some ways of whistleblowing that would be unacceptably disruptive, regardless of the merits of their protest.
4. Some whistleblowers are not protesting unlawful or unsafe behaviour but social policies by management that the employee considers unwise.
5. The legal definitions of what constitutes a safe product, danger to health, or improper treatment of employees are often far from clear or certain.
6. The efficiency and flexibility of personal administration could be threatened by the creation of legal rights to dissent and legalized review systems.
7. There can be risks to the desirable autonomy of the private sector in expanding government authority too deeply into internal business politics.

An example of the equivalent of the vexatious litigant in organisational terms has been referred to in the US context as the troubling employee (Ripley and Ripley 1993). These are employees who have entered into an "I'm entitled" mental set through Equal Opportunities legislation, Affirmative Action, Supreme Court decisions and other special interest perpetuations originally initiated for defensible, idealistic, human reasons. Such individuals are, Ripley and Ripley argue, at an arrested development level of business maturity behaviour, and expect advancement on the basis of their special privilege rather than through merit. It is possible to help such individuals to

grow up and mature with training and a suitable organisational environment. Although the authors do not make this connection, it is a logical deduction that the potential for troubling employees to become whistleblowers is much higher than the average.

The Government Accountability Project has produced a useful and realistic survival guide for whistleblowers which suggests that: " A well-planned strategy has a chance of succeeding, but unplanned or self-indulgent dissent is the path to professional suicide." (Devin, Rasor and Stewart 1989) The problems of reaching an ethical balance sheet are well rehearsed in the extended case study of the Bay Area Rapid Transit in San Francisco (Anderson et al 1980). The authors could have presented either the three whistleblowing engineers or the BART organization in various shades of purity or chicanery, but find it unrealistic to do so. They do point out that there was far from overwhelming public support for the idea of BART, and that there was considerable public relations initiative, as seen by the appointment in 1963 of B R Stokes, a former newspaperman and BART's first public relations director, as general manager. Management had to work with a politically fragmented and, therefore, relatively ineffective Board, and so moved by default into the power vacuum. Relations with the relatively small number of in-house engineers were far from satisfactory. They could observe all the problems, but had little power to intervene. Whether the matters over which they went public were trivial or material is less significant than that in the political rough-and-tumble of organizations such conflicts are bound to happen.

Apart from considering procedural and substantive ethical codes for individual whistleblowers, it is also vital to find reciprocation of organizations being prepared to act positively towards ethical whistleblowers. In the US organizations such as the Government Accountability Project have been attempting to protect the rights of legitimate whistleblowers (Devin, Rasor and Stewart 1989). In many cases this may be

a last port of call. One needs to have procedures at organizational level. Corporate codes of conduct will often be a formal safeguard, and that of J C Penney Company Inc. goes into considerable detail. (Cangemi and Brown 1989). On the professional side the Institute of Chartered Accountants in England and Wales issued, in December 1990, Guidance for Members in Business, and this certainly recognizes the possibility of whistleblowing. The establishment of the Chartered Accountants Advisory Service on Ethics (CAASE) in January 1991 to supplement the existing advisory service for members in business, IMACE, is another significant development. This may be contrasted with the statement in 1984 that, except in accountancy firms, when the position of an employer is challenged, " the institutional structure of the various professional associations can provide little or no protection to the individual." (Loeb 1984, 6) Counselling is a help, but once the act of whistleblowing has taken place, the professional associations are in no stronger position than at that time. The Chartered Association of Certified Accountants has issued helpful advice on whistleblowing:

"Whistleblowing involves a breach of trust by an employee and cannot therefore be justified on a strict interpretation of what constitutes 'proper professional conduct'. In normal circumstances the course of action advisable for a member, if faced with action which is deemed to be ethically unacceptable, is to follow a series of steps:

- (a) Bring the matter before the superior, except where the superior is involved, in which case the matter should go to the next level up. If there is no satisfactory outcome, go to the next managerial level up.
- (b) If the superior is the Chief Executive, go to a relevant authority such as the Board, the Audit Committee or the owner(s). Unless the superior is involved, such consultation should be with the superior's knowledge.

(c) If the matter is unsolved after (a) or (b) above, a member may have no alternative but to resign, putting the matter in writing for the record.

If in doubt, established procedures should be followed first and at any stage a member should feel free to consult the Association's Legal Department or take other advice.

The difficult issue in this area is where resignation does not appear to be enough of a remedy and where there is criminal action by the directors. Whilst public disclosure might be justified in the public interest, no definition of "public interest" has ever been given by the courts and a member is not therefore offered protection on precise legal terms. Nor have whistleblowers been generally well-regarded by existing fellow-employees or future employers. With such a wholly unsatisfactory degree of protection, a member will have to make a judgement about whether, having consulted the Association's Legal Department, taken legal advice and bearing in mind all the personal and other considerations and risks, the drastic step of public disclosure can be justified." (Likierman and Taylor 1990).

One is reminded of the northbound train dilemma according to which a person wants to go south, but is on a northbound train. There are three choices:

1. To consider that the north is not such a bad destination after all.
2. To alight from the train and find some other way of travelling south.
3. Attempt to have the train change direction.

The Stonefrost Committee in 1990 reported on the workings of the Honours system, and even suggested that whistleblowers might be included in the Honours List (Stonefrost 1990). "As to 'whistleblowing', we all regarded this as an important part of citizenship. We had no special problems with this issue as an element of citizenship

although if there was too much 'whistleblowing' its effective value could be drowned by the noise." (Personal Communication, Maurice F Stonefrost, 21 September 1990). The final development is the possibility of an arbitration and advisory scheme just for whistleblowers. This would expect to encourage the use of corporate codes of conduct. Interestingly, Guardian Royal Exchange, with its experience of whistleblowing tax accountant Charles Robertson, has agreed to participate in the scheme. Hopefully in the future this will go some way to minimizing the casualty rate.

CHAPTER 13. CONCLUSION.

The external auditor is attracting a duty and right to whistleblow in certain circumstances. No such duty exists in the case of internal auditors, and any rights are those arising in general employment and civil law, rather than emanating from any professional code. Indeed, internal audit professional proclamations about whistleblowing are negative, warning about the consequences and virtually requiring the internal auditor to resign his or her job. The reason for the difference may be based on the observation that whistleblowers who are relatively powerful (that is, less dependent on the organisation) are expected to suffer less retaliation (Near and Miceli 1986, 137). An experiment involving the prediction-task judgements of 106 internal auditors from the public and private sector, found internal auditors much less likely to whistleblow than external auditors (Arnold and Ponemon 1991).

The internal auditor, qua participant observer, and through involvement in social, business ethical, and environmental audits, is in a better situation than the external auditor to scrutinise an organisation's ethical stance across the totality of the organisation's involvements. This presents many more opportunities for ethical dilemmas. Most should be resolved internally, and to this end it is recommended that organisations formulate codes of ethics, which will clarify what is expected when wrongdoing is uncovered. Legal protections need to be regarded as residual, since they will only be brought into place when all else has failed, and the prognosis is less than optimal. What legal remedies there are are unsatisfactory, and full of uncertainty.

Whistleblowing should always be the exception rather than the rule, but the disappointment is the failure of the IIA to be able to support whistleblowing in any shape or form, including the situations outlined in the internal audit case studies and the

general case-studies. These are cases in which the public interest should be paramount, yet the IIA considers that the whistleblower is on their own. This position is reactionary and lacking in both moral integrity and the realism of the situations confronting their members. Other professional bodies, such as the Chartered Institute of Secretaries and the Royal College of Nursing, are much more open to help their members, and the chartered accountancy bodies are also providing constructive advice services, in the case of the Chartered Association of Certified Accountants including employing a barrister full time.

Corporate governance is another angle that is relevant. With suitable corporate governance, whistleblowing should be rendered even more rarely necessary. Corporate governance has been sadly lacking in quality in the past, and continues to give rise to concern, despite attempts at reform. The Cadbury Committee was the latest in a series of committees to consider the matter. The voluntary principle so beloved in this country is fine if it works, and if business ethics may be assumed to be at a tolerable level. However we may have just passed the point at which this argument may be sustained. Sir Brandon Rhys Williams' life-long crusade to make an audit committee compulsory for all large companies is a measure that needs to be given all party support, and legislation introduced as quickly as possible. Non-executive directors should predominate on such committees, and there should be a clear mandate to safeguard the interests of not only shareholders, but also customers, creditors, employees and other involved parties. Why, after all, should this happen in the case of corporate insolvency, but not prior to the failure of a company, by which time it is invariably too late? Prevention is far preferable to disaster.

Another matter to consider is the selection and training of directors, particularly the non-executive ones. The old boys' network in our class-ridden society equally has

served well at producing Russian spies! Colin St Johnston, Managing Director of PRO NED (Promotion of Non-Executive Directors), has indicated to me that the basis of selection is on too narrow a front, and that "This shuts off a great many people who have had successful careers and who have a great deal to contribute". The Institute of Directors has performed a sterling service in the training of directors. Perhaps the IIA could play a role here corresponding to the positive contribution played by the IIA on the Treadway Committee in the U.S., the findings of which are extremely relevant to the current discussion.

Radical suggestions are as follows. Where an organization is in an area where there is considerable public exposure and concern, such as banks, building societies, and insurance companies, not only should an audit committee be compulsory, but also the existence of a viable internal audit department, which would have to prove conformance to a recognised set of standards. External audit should be legally required to report on the extent to which internal audit is of adequate quality to assist them in their own work. Moreover they should now be mandated to report to the appropriate regulatory body in the public interest any serious illegality or dubious practice as soon as they encounter it, and a similar obligation should be placed on the internal auditor, together with safeguards as to the anonymity of informants. Only corrupt organizations have anything to fear from this. In reputable organizations much of this is already custom and practice. A closer reporting relationship between internal and external audit has long been a characteristic of the public sector.

Too many people are suffering too frequently from the small but highly significant number of rogue companies and rogue directors. For too long these criminals have been able to count on being aided and abetted by their auditors. It is now time for auditors to consider that attribute of a profession most neglected by them: responsibility

to the public. As the IIA celebrates beyond its 50th anniversary it is instructive to remember that included in the first ever research programme was the relationship of the internal auditor to the public. No such research materialised. The present would be a suitable opportunity to resurrect this topic.

Whistleblowers may never have it easy. Career mortality and occupational morbidity should be maintained at the lowest possible level. Positive whistleblowing should be recognised as in the general good. It is to be hoped that the IIA will recognize that it is swimming against the stream, and that the reactionary but honestly held attitudes of the like of Gil Courtemanche will increasingly become anachronistic. The increase in the teaching of business ethics should also improve the quality of debate and action. The IIA should institute a special award for those of its members who blow the whistle, and publicise them as an inspiration to all, rather than as individuals to be side-stepped and to be ashamed of.

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APPENDIX 1.

The Institute of Internal Auditors Professional Issues Committee

IIA POSITION PAPER ON WHISTLEBLOWING

Whistleblowing - The unauthorised dissemination by internal auditors of audit results, findings , opinions, or information acquired in the course of performing their duties to anyone outside the organisation or to the general public.

The Institute of Internal Auditors' (IIA) *Code of Ethics* and *standards for the Professional Practice of Internal Auditing* provide internal auditors with sufficient mechanisms for the reporting of audit results, findings, opinions or information acquired in the course of performing their duties, without their bringing such matters to the attention of persons outside the organisation. This reporting may involve violations of law, rules, or regulations, or damage to public health or safety.

Such mechanisms include reporting to the appropriate level of management, the audit committee of the board of directors (or its equivalent), or the board of directors as may be appropriate. Implicit in this process is the resolution of problems and improvement of internal controls. Accordingly, The IIA believes that for organisations with internal audit functions that adhere to the *standards* and *Code of Ethics* of The IIA and that are headed by an audit committee, there should be no need to report in an unauthorised manner to anyone outside the organisation.

The IIA maintains a Professional Standards Committee to assure that The Institute's

Standards and *Code of Ethics* provide the internal audit professional with guidelines and support for dealing with all issues that confront its members. Reporting to the Board of directors satisfies the requirements of the professional *Standards*.

Some internal auditors, however, may not be afforded a means to deal appropriately with findings that involve violations of law, rules, or regulations, or damage to public health or safety. Internal auditors may find resolving such matters difficult if they do not have access to an audit committee comprised solely of independent directors with a written charter setting forth the duties and responsibilities of the committee, and with the adequate resources and authority to discharge committee responsibilities. Also, the problems may be compounded if the internal audit organisations are not independent when they carry out their work and do not have organisational status sufficient to permit the accomplishment of their audit responsibilities in accordance with IIA *Standards*. In such situations, the auditor is obligated by The IIA *Standards* and *Code of Ethics* to report through the normal channels and ultimately, if necessary, to the board of directors; and to ensure that the matter is resolved satisfactorily within a reasonable period of time.

If the matter is not resolved satisfactorily, or the auditor is terminated or subject to other retaliation, the auditor should secure the advice of outside counsel regarding further action.

This position paper is not to be interpreted to restrict any internal auditor from exercising rights granted to him or her any state whistleblowing statute or any comparable federal law or rule.

APPENDIX 2.

CODE OF ETHICS, INSTITUTE OF INTERNAL AUDITORS.

Purpose

A distinguishing mark of a profession is acceptance by its members of responsibility to the interests of those it serves. Members of The Institute of Internal Auditors (Members) must maintain high standards of conduct to effectively discharge this responsibility. The Institute of Internal Auditors (The Institute) adopts this **Code of Ethics** for Members.

Applicability

This **Code of Ethics** is applicable to all Members. Membership of the Institute is a voluntary action. By acceptance, Members assume an obligation of self-discipline above and beyond the requirements of laws and regulations.

The standards of conduct set forth in this **Code of Ethics** provide basic principles in the practice of internal auditing. Members should realise that their individual judgement is required in the application of these principles.

Members who are judged by the Council of The Institute to be in violation of the standards of conduct of the **Code of Ethics** shall be subject to forfeiture of their membership in The Institute.

Standards of Conduct

- i. Members shall exercise honestly, objectively and diligence in the performance of their duties and responsibilities.
- ii. Members shall exhibit loyalty in all matters pertaining to the affairs of their organisation or to whomever they may be rendering a service. However, Members shall not knowingly be a party to any illegal or improper activity.
- iii. Members shall not knowingly engage in acts or activities which are discreditable to the profession of internal auditing or to their organisation.
- iv. Members shall refrain from entering into any activity which may be in conflict with the interest of their organisation or which would prejudice their ability to carry out objectively their duties and responsibilities.
- v. Members shall not accept anything of value from an employee, client, customer, supplier or business associate of their organisation which would impair or be presumed to impair their professional judgement.
- vi. Members shall undertake only those services which they can reasonably expect to complete with professional competence.
- vii. **Members shall adopt suitable means to comply with The Standards for the Professional Practice of Internal Auditing.**
- viii. **Members shall be prudent in the use of information acquired in the course of**

their duties. They shall not use confidential information for any personal gain nor in any manner which would be contrary to law or detrimental to the welfare of their organisation.

ix. Members, when reporting on the results of their work, shall reveal all material facts known to them which, if not revealed, could either distort reports of operations under review or conceal unlawful practices.

x. Members shall continually strive for improvement in the proficiency, effectiveness and quality of their service.

xi. Members, in the practice of their profession, shall be ever mindful of their obligation to maintain the high standards of competence, morality and dignity promulgated by The Institute. Members shall abide by the Articles and uphold the objectives of The Institute.

APPENDIX 3.

CASE LIST ON EMPLOYMENT LAW KEY CASES SUMMARISED

The contract of employment

Post Office v Roberts 1989 EAT: Mr Justice Talbot asserted : *"But in each case, in our view, you have to look at the conduct of the party whose behaviour is challenged and determine whether it is such that its effect is to disable the other party from properly carrying out his or her obligations. If it is so found that this is the result, then it may be that a tribunal could find repudiation of a contract."*

Duty of mutual trust

Thornley v Aircraft Research Association Ltd 1977 EAT 669/76: The Employment Appeal Tribunal ruled that Thornley's publishing of his research findings on the Tornado aircraft in a letter to THE GUARDIAN justified his dismissal because he had signed an undertaking not to disclose the results of the research. He was guilty of a 'breach of trust to his employers' and this constituted misconduct regardless of his motives or the accuracy of the disclosures.

Woods v W.M. Car Services (Peterborough) Ltd 1982 ICR 693 CA:

The Employment Appeal Tribunal rejoined *'In our view it is clearly established that there is implied in a contract of employment a term that the employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee....'* In the Court of Appeal, Lord Denning ruled, *'Just as a servant must*

be good and faithful, so an employer must be good and considerate.

Smith v Youth Hostels Association (England and Wales) 1980 IT:

This probed both the implied term of mutual trust and the duty of the employer to support employees in carrying out their jobs. Smith acted as a storeroom supervisor. He reported a systematic loss of stock, and was pressured by the managers to conceal it. When he eventually became ill with the stress, he was threatened with dismissal for his continuing absence, and his job was advertised. He resigned, claiming constructive and unfair dismissal. The industrial tribunal agreed, *'Not only were the respondents in breach of his contract by making it impossible for Mr. Smith effectively to carry out his job,...we also considered that their attitude was such as to be a breach of the implied term in any contract of employment that there should be a relationship of trust or confidence between the parties'*.

Bliss v SE Thames Regional Health Authority 1985 IRLR 308, CA:

In this wrongful dismissal case, Lord Justice Dillon indicated that there was now ample authority to warrant the implication of a term in employment contracts that a party *'would not without reasonable cause conduct itself in a manner likely to damage or destroy the relationship of confidence or trust between parties as employer and employee'*.

Duty of reasonable support

Wigan Borough Council v Davies 1979 ICR 411:

The Employment Appeal Tribunal accepted that there was an implied term that employers would take such steps as were reasonable to support an employee in carrying out duties without harassment or disruption. Here, the breach of duty derived

from Wigan Borough Council's failure to give proper support to a junior manager in an old people's home who had been 'sent to Coventry' by other staff.

Adams v Southampton & S W Hants Health Authority COIT 1560/156:

A hospital contravened the implied term of reasonable support by its inability to take proper steps to protect an employee who was abused and harassed to the verge of leaving after she had continued to work normally during a strike. This implied duty was affirmed in the case of the **London Borough of Islington v Richards EAT 649/86**.

Callanan v Surrey Area Health Authority 1980 IT:

Callanan was a student nurse at a psychiatric hospital. He penned a confidential letter to the hospital nursing officer about a senior charge nurse assaulting patients and giving overdoses of drugs. An investigation began and the charge nurse and colleagues refused to work with Callanan. Moreover he was turned away by management when reporting for duty. Expulsion from the Confederation of Health Service Employees then resulted, and the hospital's management committee dictated that he should not return to work, but rather return to nursing school, which would not count towards his training time. He resigned and claimed constructive and unfair dismissal. This was upheld and compensation awarded.

Robinson v Crompton Ltd 1978 ICR 401:

The duty to support rules out the making of unjustified accusations against the employee.

Carter v Arnold & Golding COIT 1729/193:

The duty to support prevents thoughtless or indiscreet behaviour in relation to the

employee.

Ferguson v Henry Wigfall & Son Ltd COIT 1550/141:

The duty to support dictates against undermining the authority of the employee, particularly if he/she is working in a supervisory capacity.

Duty to provide safe and healthy working conditions

British Aircraft Corporation v Austin 1978 IRLR 332 EAT:

The Employment Appeal Tribunal ruled that the employer's general duty to take reasonable care for the safety of employees prompted a specific obligation to investigate promptly complaints of lack of personal or public safety raised by employees. Austin resigned and was able to claim constructive and unfair dismissal because her complaint of failure to provide her with suitable safety goggles was not investigated or remedied during the passage of many months.

Unlawful acts

Morrish v Henly's (Folkestone) Ltd 1973 (ICR 482):

The National Industrial Relations Court (EAT's predecessor) found that dismissing an employee for refusal to connive in the falsification of company records over drawing petrol for a van was unfair.

Donnelly v Renilson & Co (coit 1414/143):

Donnelly resigned to avoid driving untaxed vehicles. An industrial tribunal held this was unfair dismissal.

Craig v Engine Applications 1978 EAT:

Craig, an export clerk, made an untrue declaration to customs at his employer's behest. The next occasion, he reported his employers to Customs & Excise, but that application was never processed. He resigned over a third irregularity two months later, claiming constructive and unfair dismissal. The tribunal rejected his claims since he had been a willing participant in the first act, and then had not resigned immediately he had made the report on his employers.

Sybron Corporation v Rochem Ltd 1983, IRLR 253 and 2 All ER 707 CA:

The Court ruled that the manager for European affairs of an American financial conglomerate had been under an implied contractual duty to report to his employers the complicity of some of his fellow employees in a massive commercial fraud upon his employers. Evidence showed he had been aware of it. The court held that, *'He may be so placed in the hierarchy as to have a duty to report either the misconduct of his superior.... or the misconduct of his inferiors'*.

Cooper v Plessey Semiconductors 1983 IT:

A foreman was fairly dismissed for failing to report to supervisors misconduct of employees who were sleeping on the night shifts. The chair of the tribunal stated: *'...These three men were in a position of trust. They should have come to management at the earliest time to say this sort of thing was going on and sought guidance how to deal with it'*.

Canning v GLC 1980 IRLR 378 EAT:

Canning, a housing officer, asked the Greater London Council to investigate an outside contractor who was submitting fraudulent paperwork. When no action was taken, he quit, claiming constructive and unfair dismissal. This was denied. The tribunal opined that whilst there is an implied term in the contract of employment that employers will behave honourably in business dealings, it is not broken in cases where employers 'innocently' fail to investigate allegations of irregularities.

Duty of confidence

Disclosure of information in the public interest

Initial Services Ltd v Putterill 1968 1 QB 396:

Putterill resigned as sales manager just before handing documents to the DAILY MAIL concerning unlawful price fixing. His employers brought an action for breach of confidence. In ruling that prevention of disclosure would be contrary to the public interest, Lord Denning held that the public interest exception to the duty of confidence extends to *'any misconduct of such a nature that it ought to be disclosed to others.... The exception should extend to crimes, frauds and misdeeds, both those actually committed as well as those in contemplation'*.

Hubbard v Vosper 1972 2 QB 84:

When an interlocutory injunction was sought to stop publication of a book about the Church of Scientology, Lord Denning added to the list of activities which may be in the public interest, the disclosure of activities that are *'dangerous to members of the public'*.

Dunford and Elliott Ltd v Johnson and Firth Brown Ltd 1977 1 Lloyd's

Rep. 505:

A report designated as confidential was passed to the defendants, who made use of the confidential information. Lord Denning considered that the courts will not enforce confidentiality in cases where the bounds of confidentiality are drawn wider than is reasonable, or if keeping information confidential would be contrary to the public interest, or if there is just cause for its disclosure.

**Limits on a public interest defence to actions for
breach of confidence**

Beloff v Pressdam Ltd 1973 1 All ER 241:

Mr Justice Ungeod - Thomas asserted, '*..... public interest, as now recognised by law, does not extend beyond misdeeds of a serious nature and importance to the country and thus, in my view, clearly recognisable as such*'. The court had rejected a public interest defence to breach of copyright over publication by the defendants of speculation about the identity of a possible successor to Prime Minister Edward Heath.

Distillers Co (Biochemicals) Ltd v Times Newspapers Ltd 1975 1 QB 613:

The Distillers Company applied for an interlocutory injunction to restrain the Times Newspapers Ltd from publishing confidential documents indicating possible negligence by the company over the drug thalidomide. In rejecting a public interest defence of disclosure, Mr Justice Talbot commented: '*There is here no crime or fraud or misdeed on the part of the plaintiffs, and in my view negligence, even if it could be proved, could not be within the same class so as to constitute an exception to the need to protect confidentiality*'.

Lion Laboratories Ltd v Evans 1984 3 WLR 539:

The Court of Appeal held that the public interest defence was not limited to situations where there had been serious wrongdoing by the plaintiff, but would extend to situations where the public had a serious and legitimate interest in the revelation.

Restrictions on obtaining and receiving information

Distillers Co (Biochemicals) Ltd v Times Newspapers Ltd:

Mr Justice Talbot permitted an injunction against publication of documents obtained during the discovery process for judicial proceedings. He ruled, *'.... the defendants have not persuaded me that such use is of greater advantage to the public than the public's interest in the need for the proper administration of justice, to protect the confidentiality of discovery of documents'*. However, in **Lion Laboratories Ltd v Evans** below, the information disclosed was considered to be sufficiently important to justify the unlawful means obtained and the *'flagrant breach of confidence'*.

Malone v Metropolitan Police Commissioner 1979 2 WLR 700:

The court admitted that there may be a defence of just cause where although information (here obtained through telephone tapping) in the event is entirely innocent, there had been reasonable suspicion of wrongdoing.

Francome v Mirror Group Newspapers Ltd 1984 WLR 892:

The court rejected a public interest defence to an injunction which prevented the DAILY MIRROR from publishing allegations that Francome had breached the rules of racing, a national newspaper not being an appropriate recipient of such information.

Lion Laboratories Ltd v Evans 1984 3 WLR 539:

Lord Justice Stephenson held *'there is confidential information which the public may have a right to receive (in this case the potential inaccuracy of the Intoximeter 3000, a device being used as evidence in court) and which others, in particular the press (now extended to the media) may have a right and even a duty to publish, even if the information has been unlawfully obtained in flagrant breach of confidence and irrespective of the motive of the informer'*.

In a case heard in the High Court, Chancery Division, in which the plaintiff and the defendant were not allowed to be named, **IRLR 447 1989**, Mr Justice Scott dictated that the defendant's duty of confidence arising from his employment did not extend so as to rule out disclosure to the Financial Investment Management and Brokers' Regulatory Authority (FIMBRA) and the Inland Revenue, provided that the disclosures were within the prerogative of those authorities to investigate. The defendant, as a former employee and former compliance officer, had been prevented by an injunction from passing the confidential documents of the plaintiff's, who were investment advisers and managers, to these bodies.

Victimisation

Kirby v Manpower Services Commission 1980 1 WLR 725:

Kirby worked at a job centre. When he informed the local Council for Community Relations that potential employers registered with the job centre were discriminating against non-white applicants, he was demoted. He appealed to an industrial tribunal under the Race Relations Act, but the tribunal dismissed the appeal, holding that Kirby was not treated less favourably than any other employee would have been who disclosed information to an outside body. The Employment Appeal Tribunal upheld this decision.

Wild and Joseph v Stephens and David Clulow Ltd 1980 COIT 1031/35:

Wild, personnel manager at Clulow Ltd, complained first to a supervisor and then the managing director, when Joseph was moved because it was thought undesirable to have a black receptionist. When nothing happened, she complained to the Commission for Racial Equality. She was then offered demotion or redundancy. An industrial tribunal ruled that she had been victimised and unfairly dismissed against the provisions of the Race Relations Act. Taking a different line than the tribunal in the Kirby case, Sir Jocelyn Bodilly commented, '.... we think that grammatically the words *in those circumstances* mean no more than reference to persons in the 'discriminator's' employment in a comparable field of employment'.

Aziz v Trinity Street Taxis Ltd 1988 CA:

Disciplinary action was taken against Aziz because he made secret tape recordings to show racial discrimination. Both the EAT and the Court of Appeal held that anyone in those circumstances, i.e. making such recordings, whatever the motive, would have been treated in the same way. Therefore the less favourable treatment comparison to prove racial discrimination was not satisfied.

Compensation

Lifeguard Assurance Co Ltd v Zadrozny 1977 EAT:

The tribunal stated that compensatory awards are intended to make up financial loss arising from unfair dismissal, not to penalise employers, or to comfort the sacked employee. More recent decisions have expanded the scope of compensation to cover consequences of the dismissal other than pure loss of wages. Thus we have:

Norton Tool Co v Tewson 1972 ICR 501:

Sir John Donaldson ruled, *'... we need only consider whether the manner and circumstances of his dismissal could give rise to any risk of financial loss at a later stage, for example making him less acceptable to potential employers or exceptionally liable to selection for dismissal'*. The tribunal also stated that employees should not be compensated for injured feelings.

Alexander v Home Office 1988 CA:

The court observed that whilst general damages should not be given on the same basis as damages for defamation of character, if the employee had been brought into 'hatred, ridicule or contempt', this should be a factor in assessing damages.

NW Thames Regional Health Authority v Noone 1988 CA:

The Court of Appeal upheld a decision of less favourable treatment on racial grounds and awarded £3,000 specifically for injury to feelings.

Lawton v BOC Transfield Ltd 1987:

Lawton lost an action for compensation of this type because the court ruled that his employers had not been in breach of a duty of care. However, the court did not rule that such a duty of care could not arise in other circumstances.

Re - employment

O'Laoire v Jackel International Ltd CA 1989:

The court ruled that an order to reinstate under the Employment Protection (Consolidation) Act 1978 is only enforceable through that Act. This means that the ultimate sanction available is a modest amount

of '*additional compensation*' (the maximum is rarely if ever given).

Morgan Electrical Carbon Ltd v Donne 1987 EAT:

The Employment Appeal Tribunal held that in fixing compensation for failure to comply with re-employment, tribunals must address the employer's conduct in not re-employing.

ABBREVIATIONS

All ER	All England Law Reports
CA	Court of Appeal
COIT	Central Office of the Industrial Tribunals
EAT	Employment Appeal Tribunal
ICR	Industrial Cases Reports
IRLR	Industrial Relations Law Reports
IT	Industrial Tribunal
Lloyds Rep	Lloyds Reports
QB	Law Reports, Queen's Bench Division current
RPC	Reports of Patent Cases
WLR	Weekly Law Reports

ALPHABETICAL CASE LIST

Adams v Southampton & SW Hants Health Authority COIT 1560/156 (duty to support)

Alexander v Home Office 1988 CA (compensation)

Aziz v Trinity Street Taxis Ltd 1988 CA (victimisation)

Beloff v Pressdram Ltd 1973 1 All ER 241 (disclosure in the public interest)

Bliss v SE Thames Regional Health Authority 1985 CA (breach of trust)

British Aircraft Corporation v Austin 1978 IRLR 332 EAT (health and safety)

Callanan v Surrey Area Health Authority 1980 IT (duty to support)
Canning v GLC 1980 IRLR 378 EAT (unlawful acts)
Carter v Arnold & Golding COIT 1729/193 (duty to support)
Cooper v Plessy Semi-conductors 1983 IT (unlawful acts)
Craig v Engine Applications 1978 EAT (unlawful acts)
Distillers Co (Biochemicals) Ltd v Times Newspapers Ltd 1975 1 QB 613 (disclosure in the public interest)
Donnelly v Renilson & Co COIT 1414/143 (unlawful acts)
Dunford and Elliott Ltd v Johnson and Firth Brown Ltd 1977 1 Lloyds Rep 505 (disclosure in the public interest)
Ferguson v Henry Wigfall & Son Ltd COIT 1550/141 (duty to support)
Francome v Mirror Group Newspapers Ltd 1984 WLR 892 (disclosure in the public interest)
Hubbard v Vosper 1972 2 QB 84 (disclosure in the public interest)
Initial Services v Putterill 1968 1 QB 396 (disclosure in the public interest)
Kirby v Manpower Services Commission 1980 1 WLR 725 (victimisation)
Lawton v BOC Transhield Ltd 1987 High Court (compensation)
Lifeguard Assurance Co Ltd v Zadrozny 1977 EAT (compensation)
Lion Laboratories Ltd v Evans 1984 3 WLR 539 (disclosure in the public interest)
London Borough of Islington v Richards EAT 649/86 (duty to support)
Malone v Metropolitan Police Commissioner 1979 2 WLR 700 (just cause in breach of confidentiality)
Morganite Electrical Carbon Ltd v Donne 1987 EAT (re-employment)
Morrish v Henly's (Folkestone) Ltd 1973 ICR 482 (unlawful acts)
Norton Tool Co v Tewson 1972 ICR 501 (compensation)
NW Thames Regional Health Authority v Noone 1988 CA (compensation)
O'Laoire v Jackel International Ltd 1989 CA (re-employment)
Post Office v Roberts 1980 EAT (repudiation of contract)

Robinson v Crompton Ltd 1978 ICR 401 (duty to support)

Smith v Youth Hostels Association (England and Wales) 1980 IT (breach of trust)

Sybron Corporation v Rochem Ltd 1983 CA (unlawful acts)

Thornley v Aircraft Research Association Ltd 1977 EAT 669/76 (breach of trust)

Wigan Borough Council v Davies 1979 ICR 411 (duty to support)

Wild and Joseph v Stephens and David Clulow Ltd 1980 COIT 1031/35 (victimisation)

Woods v WM Car Services (Peterborough) Ltd 1982 ICR 693 CA (breach of trust)

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